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AS WELL AS AN
INDEX of REFERENCE to all the ANCIENT and
MODERN ENTRIES extant.

By JOHN WENTWORTH, Esq.
OF THE INNER TEMPLE, BARRISTER AT LAW.

*Ne quæ Studio dispôsta fideli
Intellecta priusquam sint contempta relinquant.* LUCRET.

V O L. VIII.

CONTAINING
REPLEVIN. TORT.

L O N D O N:
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1798.

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S AND COGNIZANCES BY FREEHOLDERS, COPYHOLDERS, DAMAGE FEASANT, AND PLEAS IN BAR.

in the Common Pleas, Trinity Term, 28. Geo. III.

And to wit. William Woodhatch, late of the parish of Woking, in the county aforesaid, yeoman, was summoned to answer to Thomas Baker of a plea, wherefore he took of the said Thomas and unjustly detained them against and pledges; and whereupon the said Thomas B. by Sibthorp, his attorney, complains, that the said William, on the twenty-first of March, A. D. 1798, at the parish of Woking in the said county of Surry, in a certain close there of the said Thomas B. commonly called or known by the name of Highland's took the cattle of the said Thomas B. to wit, six ewes, the value of the said Thomas B. of the value of twenty pounds, there and being, and unjustly detained them against sureties and damages until, &c.; whereupon the said Tho. B. saith that he is and hath sustained damage to the value of twenty pounds, whereupon he brings suit, &c.: And the said William, by John Holloway, his attorney, comes and defends the wrong as bailiff, that the said Thomas B. is a copyholder, when, &c. and as bailiff of Amey Head, widow, locus in quo * was the freehold of A. H. and that he took sheep damage feasant therein. acknowledges the taking of the said cattle in the said declaration mentioned, in the said place in which, &c. and justly, because he says, that the said place in which, &c. now is, the same time when, &c. was, and from time whereof the memory of man is not to the contrary hath been, within and parcel of the said manor of Woking, in the said county of S. and custom-bound of the said manor, demised and demiseable by copy of the rolls of the same manor by the lord of the said manor, or by the steward of the court of the said manor for the time being, to any person or persons willing to take the same in fee simple for ever or otherwise, at the will of the lord of the said manor, accord-

The locus in quo appeared to be a customary freehold; therefore there were several cognizances, stating the freehold in different ways.

ing to the custom of the said manor; and that long before the said time when, &c. to wit, on the thirteenth of October 1758, the right honourable Richard lord Onslow, now deceased, then being lord of the said manor, at his court held *in and for* the said manor, before John Chatfield, gentleman, then steward of the said court, by copy of the court rolls of the said manor, granted to the said Amey Head, the said place in which, &c. amongst other things, to hold to the said Amey Head, "*her heirs and assigns, for and during the term of her natural life*," that is, at the will of the lord of the said manor, according to the custom of the said manor, by virtue of which said grant the said Amey H. afterwards, and before the time when, &c. to wit, at the day and year last aforesaid, entered into the said place in which, &c. and became, and was, and still is, thereof seised in her demesne as "*of fee*" *freehold, for and during the term of her natural life*, at the will of the lord of the said manor according to the custom of the said manor; and because the said cattle at the said time when, &c. were in the said place in which, &c. eating up and depasturing the grass there then growing, and doing damage there, he the said William as bailiff of the Amey H. well acknowledges the taking of the said cattle in the said place in which, &c. and justly, &c. so doing damage there, &c.; and this he is ready to verify; wherefore he prays judgment and a return of the said cattle, together with his costs and charges, according to the form of the statute in such case made and provided, to be adjudged to him, &c. : And for a further cognizance in this behalf the said William, by leave of the court here to him for that purpose granted, according to the form of the statute in such made and provided, as bailiff of the said Amey H. well acknowledges, &c. [as in the first cognizance, except the words in *Italic*, which are to be omitted, and inserting the words within inverted commas] : Third cognizance, like cognizance, as bailiff of Amey H. ; because he says, that the said place in which, &c. now is, and at the said time when, &c. was the close, soil, and freehold of the said Amey H. ; and because the said cattle at the said time when, &c. were in the said place in which, &c. eating up, &c. &c. [as in the above cognizance to the end.]

2d Cognizance.

3d Cognizance.

GEORGE BOND.

Mr. Marryat originally drew only the last of the three cognizances, and wrote the following opinion :

I have judged it more advisable to make cognizance as bailiff of Mrs. Head, than to avow upon the defendant's own title as her lessee; because, not having any instructions as to the terms of his tenancy, I might mistake the demise, and expose the defendant to an unfavourable issue. I think the cognizance may stand single, the language of the admission imports the estate to be a *customary freehold*, and not as *copyhold*, being to hold according to the custom of the manor, and not at the will of the lord;

and it is laid down by BL. in the 2d vol. of his Comm. p. 149. that the freehold in such case is in the tenant; and several authorities are there referred to in support of the proposition. It is, however, very equivocal upon the will recited in the admission what estate passed under it to Mrs. H. but it will not be material to enquire minutely into this point, unless the title should be put in issue by the plaintiff's plea in bar (a). On the facts stated to me I think the distress was justifiable, and consequently that Mr. Woodhatch may defend this action.

SAMUEL MARRYAT.

(a) See Plea in Bar, *infra*.

It



It is extremely questionable to me what estate the widow took under the will of her husband, that is, whether it was a fee or barely an estate for life; and on the admission they seem to have had this doubt, as she is there admitted only according to the devise in her husband's will, be that what it may. If this is clear I should advise the addition of a second cognizance, stating that the lands were copyhold, held of the manor of W. and that the lord had granted the estate to her for life, or in fee, &c. and perhaps if an order for this could now be got, two more avowries, one stating a grant in fee, and the other a grant for life, would be advisable: For if the plaintiff should put our title in issue I am not satisfied the present avowry, which states it to be the *close, soil, and freehold* of Mrs. H. would be safe; for, though as Mr. Marryat has very aptly stated, a copyhold admission, not said *to be held at the will of the lord*, hath been shewn by J. Black. to be a sort of customary freehold, yet it is not such a freehold as comes under the idea of *close, soil, and freehold*, for that I apprehend means a freehold *tenure*, and a freehold *interest*, held by common law conveyances, and not that species of equivocal freehold to be found in some few parts of England, and ranked under the idea of customary freehold of a base tenure. Perhaps also the admission of the said Mrs. H. omitting the words, *at*

the will of the lord, is a mere mistake of the steward, and if so we should be gone on a traverse of the title; for unless the custom hath uniformly been to admit in this way, and the tenement in question, as well as the other tenancies of the manor, have those badges of privileged villenage that constitute a customary freehold, we shall be gone, as none of these estates without badges of this sort can be deemed *freehold*. I therefore am not willing to rely upon this cognizance *alone*, unless we can be sure these copyholds are of the freehold description, by consulting the rolls of the manor. The cognizances I have pointed out seem to be proper. The terms on which Mr. Woodhatch holds from Mrs. H. are so obscurely stated, that I conceive it is better to make cognizance as bailiff than to avow in Woodhatch's own right. As Baker took back Stump's Mead into his own occupation at Christmas, and thereby relinquished the *locus in quo*, I think the distress warranted in point of law on what is stated, and we should therefore be more cautious as to our avowry.

GEORGE BOND.

The two first cognizances were added in conformity to this opinion, which the Serjeant read and approved, and said he thought necessary to be pleaded, unless the plaintiff would engage not to controvert the title.

And the said Thomas B. as to the cognizance of the said William Woodhatch by him first above made, says, that the said William by reason of any thing in that cognizance alledged ought not to acknowledge the said taking of the said cattle in the said declaration mentioned, in the said place in which, &c. to be just; because he says, that although true it is that the said place in which, &c. is, and at the said time when, &c. was, and from time whereof the memory of man is not to the contrary, hath been within and parcel of the said manor of Woking, in the said county of S. and customary land of the said manor, demised and demisable by copy of court rolls of the said manor, by the lord of the same manor, or by his steward of the court of the said manor for the time being, in manner and form as the said William hath in his said first cognizance in that behalf above alledged; and that the said right honourable Richard late lord Onslow, deceased, granted to the said Amey H. the said place in which, &c. amongst other things, to hold the same to the said Amey H. for and during the term of her natural life, at the will of the lord of the said manor, according

Plea in bar to the 1st cognizance, that A. H. demised premises from year to year to one James M. and that plaintiff holds *locus in quo* under a demise from J. M.

to the custom of the said manor; and that the said A. H. by virtue of the said grant entered into the said place in which, &c. and became, and was, and still is, thereof seised, in manner and form as in the said first cognizance is above alledged; nevertheless for a plea in bar in this behalf the said Thomas says, that the said Amey H. after the said grant of the said place in which, &c. and after she became so seised thereof as aforesaid, and before the said time when, &c. to wit, on the twenty-ninth of September 1776, at the parish of W. aforesaid, in the said county of S. did demise the said place in which, &c. amongst other things, to one James Mansell, to have and to hold the same to the said James for and during the term of one year from thence next ensuing, and so on from year to year for so long a time as the said Amey H. should please, at a certain yearly rent to be paid by the said James to the said A. H. for the same: And the said Thomas further in fact says, that the said James, after the making of the said demise, and by virtue thereof, before the said time, when, &c. to wit, on the same day and year last aforesaid, at the parish aforesaid, in the county aforesaid, entered into the said place in which, &c. and the said other things so demised, and became and was possessed thereof for the said term to him thereof demised; and that the said James being so thereof possessed, he the said James afterwards, and during the continuance of the said term, and before the said time when, &c. to wit, on the twenty-ninth of September 1785, at the said parish aforesaid, in the county aforesaid, demised the said place in which, &c. to him the said Thomas Baker, to have and to hold the same to him the said Thomas for and during the term of one year from thence next ensuing, and so on from year to year, for so long a time as the said James and he the said Thomas should please, if the term and interest of him the said James in the said place in which, &c. should so long continue, at and under a certain yearly rent, to be paid by the said Thomas to the said James for the same: And the said Thomas further in fact says, that the term and interest of him the said James in the said place in which, &c. did continue until the said time when, &c. and that he the said Thomas, by virtue of the said last-mentioned demise, to wit, on the same day and year last aforesaid, in the parish aforesaid, in the county aforesaid, entered into the said place in which, &c. so demised to him as aforesaid, and became and was possessed thereof, and remained and continued so possessed thereof under and by virtue of the said demise until the said William of his own wrong, at the said time when, &c. took the cattle of him the said Thomas in the said declaration mentioned, in the said place in which, &c. and unjustly detained them against sureties and pledges, in manner and form as he the said Thomas hath above thereof complained against him the said William; and this he the said Thomas is ready to verify; wherefore he prays judgment and his damages aforesaid, by occasion of the premises, to be adjudged to him, &c.: And the said T. B. as to the cognizance of the said William by him secondly above made, says, that the said William, by reason of any thing in that cognizance

Plea to 2d cognizance.

nizance alledged, ought not to acknowledge, &c. &c. [exactly like the first plea in bar, only confessing a grant for life instead of a grant in fee]: And the said Thomas B. as to the cognizance of the said William, by him lastly above made, says, that although true it is that the said place in which, &c. is, and at the said time when, &c. was, the close, soil, and freehold of the said A. H. as he the said William hath in his last cognizance above alledged; nevertheless for a plea in bar in this behalf, the said Thomas says, that the said A. H. long before the said time when, &c. to wit, on the twenty-ninth of September 1776, at the parish of W. aforesaid, in the said county of Surry, did demise the said place in which, &c. amongst other things, to James Mansell, for and during the term of one year from thence next ensuing, and so on from year to year, for so long time as the said A. and the said James should please, at a certain yearly rent, &c. &c. &c. [to the end like the first plea in bar.]

Plea to 3d cognizance.

S. LE BLANC.

And the said William, as to the said pleas above respectively pleaded by the said Thomas in bar to the several cognizances above made by the said William, says, that he by reason of any thing in those pleas or either of them alledged, ought not to be barred from maintaining his said several cognizances in that behalf; because though true it is that the said A. H. did demise the said place in which, &c. amongst other things, to the said James M. and that the said James M. by virtue of such demise, entered and demised the said place in which, &c. to the said Thomas, and that the said Thomas also entered thereon, as in the said pleas is alledged; yet for replication in this behalf, the said William says, that the said James M. afterwards, and before the said time when, &c. to wit, on the twenty-fourth of October 1787, at the parish aforesaid, surrendered and yielded up the said place in which, &c. amongst the said other things so demised to him by the said A. H. as in the said plea is mentioned, and all his term and interest therein unto the said Amey H. who then and there accepted of such surrender, whereof the said Thomas afterwards, and before the said time when, &c. to wit, on the day and year last aforesaid, at the parish aforesaid, had notice, without this, that the term and interest of him the said James M. in the said place in which, &c. did continue until and at the said time when, &c. in manner and form as the said Thomas hath in and by his said pleas in that behalf alledged; and this the said William is ready to verify; wherefore, as before, he prays judgment, and a return of the said cattle, together with his costs and charges, according to the form of the statute in such case made and provided, to be adjudged to him, &c.

Replication to all the pleas, traversing the continuance of the term in J. M. to the time when, &c.

GEORGE BOND.

I have in this replication endeavoured to shorten the pleadings which have been already drawn out to a considerable length

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for so unimportant a dispute, by making one general replication to all the pleas in bar, which, on comparison, appear to have been

been pleaded exactly alike to each of the cognizances. I never before knew this to be done ~~before~~ in practice, but can see no sort of objection to it in point of law, and apprehend it will not only meet with the approbation of the Serjeant, by whom the replication must be settled and signed, but would also be countenanced if ever its propriety should be questioned. With respect to Mrs. H.'s title it is now perfectly out of dispute, and the only point that can come in issue is the continuance of M.'s tenancy under her, which of course depends upon the fact of his surrender; and it appears to me upon the

circumstances stated in my instructions, that the defendant will prevail upon the trial. If the Serjeant should be of the same opinion, and the defendant wishes it, he may deliver the issue when complete, and carry down the record himself to the assizes; but I doubt whether he can by the strict practice of the court of common pleas add an issue for the plaintiff upon the traverse taken, though if the plaintiff should pay for an issue book so delivered, he certainly cannot afterwards object.

SAMUEL MARRYAT.

Rejoinder, traversing the surrender up of premises, (amongst other things, &c.) demised to A. H.

And the said Thomas, as to the plea of the said William by him above pleaded in reply to the said pleas of him the said Thomas above respectively pleaded in bar to the several cognizances above made by the said William, says, that he the said Thomas, by reason of any thing by the said William in his said replication above alleged, ought not to be barred from having and maintaining his aforesaid action against the said William; because protesting, that the said replication of the said William, and the matters therein contained, are not sufficient in law to bar him the said Thomas from having and maintaining his aforesaid action against the said William; and that he the said Thomas is not under any necessity, or in anywise bound by the laws of this realm to answer thereto; nevertheless for rejoinder in this behalf, the said Thomas says, that the said James M. before the said time when, &c, did not surrender and yield up the said place in which, &c, amongst the said other things, so demised to him by the said Amey Head, and all his term and interest therein, unto the said A. H. in manner and form as the said William hath in his said replication above alleged; and this the said Thomas prays may be enquired of by the country, &c,

Demurrer to the rejoinder.

And the said William, as to the said rejoinder of the said Thomas by him above pleaded, says, that the said rejoinder, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar the said William from maintaining his said several cognizances in that behalf; and that he the said William is not under any necessity, nor in anywise bound by the law of the land to answer the said rejoinder; and this he is ready to verify; wherefore for want of a sufficient rejoinder in this behalf, he as before prays judgment and a return of the cattle, together with his costs and charges, according to the form of the statute in such case made and provided, to be adjudged to him, &c,: And for causes of demurrer in law, the said William, according to the form of the statute in such case made and provided, sets down and shews to the court here the causes following, that is to say, for that although the said William has concluded his replication with a direct traverse of a material

Causes.

terial fact alledged by the pleas in bar of the said Thomas, yet the said Thomas has not by his said rejoinder taken or tendered any issue upon the fact so traversed, but has attempted to put in issue matter alledged in the said replication merely by way of inducement to the said traverse: And for that the said T. has by his said rejoinder attempted to put in issue matter that is altogether unissuable, and particularly whether the said James surrendered other places than the said place in which, &c. to the said A. H. which is a point wholly immaterial and irrelevant in this cause; and for that the said rejoinder does not maintain the said pleas in bar of the said Thomas, but is a departure therefrom, and tends to an unnecessary prolixity in pleading; and for that the said Thomas, although he has by his said rejoinder denied only one of the matters alledged in the said replication, has nevertheless concluded his said rejoinder to the country, instead of concluding it with a verification, which he ought to have done; and for that the said rejoinder is in various other respects uncertain, insufficient, and informal, &c.

I have demurred to the rejoinder in this case, being clearly of opinion that it is bad on the grounds aforesaid for cause; for I take it to be a general rule in pleading, that when a traverse is properly taken upon any material allegation, an issue can be taken only on the fact traversed, and not on any matter alledged by way of inducement. Vide Bac. Abr.

72 and 73. It also strikes me as a further objection to the rejoinder, that it attempts to put in issue the fact of Mansell's having surrendered up to Mrs. H. other lands besides the *locus in quo*, which is all that can be material to the present action.

SAMUEL MARRYAT.

AND the said Simon, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and in his own right well avows, and as bailiff of William Bishop, well acknowledges the taking of the said goods and chattels in the said close in which, &c. and justly, &c.; because he says, that the said close in which, &c. before, and at the said time when, &c. was a close of arable land, lying and being at W. aforesaid, in the county aforesaid, and called as well by the name of Nettlested as by the name of Bailey Close, and that long before the said time when, &c. to wit, on, &c. A. D. 1776, the right honourable E. T. earl of Winter-ton was, and from thenceforth hitherto hath been, and still is, seised in his demesne as of fee of and in the said close in which, &c. with the appurtenances, amongst other things, and being so seised, he the said E. T. earl of W. before the said time when, &c. to wit, on, &c. A. D. 1776, at W. aforesaid, demised the said close of land in which, &c. with the appurtenances, amongst other things, to the said W. B. and the said Simon, to hold the same to them the said W. B. and Simon from that day for one year then next ensuing, and so on from year to year for so long a time as the said E. T. earl of W. W. B. and Simon should please; by virtue of which said demise the said W. B. and Simon afterwards, and before the said time when, &c. to wit, on, &c. at, &c. en-

Avowry and cognizance by one joint tenant in his own right, and as bailiff to the other tenants, to the owner of the fee from year to year, so long as both pleased; that he took the two waggons in their close encumbering the same, and covering and spoiling the grass, as a distress.

tered into the said close in which, &c. with the appurtenances, amongst other things, and at the said time when, &c. were and still are possessed thereof; and because the said two waggons in the said declaration mentioned, at the said time when, &c. were in the said close in which, &c. incumbering the same and taking up room there, and covering and spoiling the grafs and soil of the said W. B. and Simon there, and doing damage to the said W. B. and Simon there, he the said Simon in his own right well avows, and as bailiff of the said W. B. well acknowledges the said taking of the said two waggons at the said time when, &c. in the said place in which, &c. so incumbering the said close and taking up room there, and so doing damage there to the said W. B. and Simon, and justly, &c. as and for a distress for the said damage so there done and doing, &c.: And for a further avowry, he the said Simon, by leave of, &c. &c. &c. [Same as the first, only omitting every thing relative to William Bishop.]

2d avowry, stating it to be his own demise, and omitting his co-tenant.

Plea in bar thereto. that the plaintiff sent his servants, horses, and waggons to take the tithe growing in the *locus in quo*, being farmer of the same for the term of ten years under the heir at law of a person to whom the tithe had been granted for three lives by the bishop of Ely, the owner in fee in right of his bishopric. The whole title set out particularly.

And the said Peter, as to the said avowry and cognizance of the said Simon by him first above made, says, that the said Simon, by reason of any thing therein alledged, ought not in his own right to avow, nor as bailiff of the said W. B. to acknowledge the taking of the said goods and chattels in the said close in which, &c. to be just; because he the said Peter says, that M. late lord Bishop of Ely, in his lifetime, long before the said time when, &c. to wit, on, &c. at, &c. in, &c. was seised as of fee and right, in right of his said bishoprick, of and in all and singular the tithes of corn yearly growing, coming, and renewing in and upon the said close in which, &c. and being so thereof seised, he the said M. late lord bishop of Ely, in his lifetime, long before the said time when, &c. to wit, on, &c. at, &c. in, &c. demised to one E. W. amongst other things, the said tithes, with the appurtenances, to have and to hold the same to the said E. W. his heirs and assigns, from the making of the said demise for and during the natural life and lives of A. E. W. S. C. and W. F. and for and during the life of the longest liver of them, by virtue whereof the said E. W. became seised of the said tithes, with the appurtenances, as of freehold, for the lives of the said A. E. W. S. C. and W. F. and for the life of the longest liver of them; and being so thereof seised afterwards, and during the lives of the said A. E. W. S. C. and W. F. and before the said time when, &c. to wit, on, &c. at, &c. in, &c. the said E. W. died so seised of and in the said tithes, with the appurtenances as aforeaid, upon whose death the said tithes, with the appurtenances, descended and came to S. W. the only surviving sister and heir at law of the said E. W.; and thereupon the said S. W. afterwards, and before the said time when, &c. and during the lives of the said A. E. W. S. C. and W. F. to wit, on, &c. at, &c. in, &c. entered upon the said tithes, with the appurtenances, and was and yet is thereof seised as of freehold, for the lives of the said A. E. W. S. C. and W. F. and for the life of the longest liver of them; and

and being so thereof possessed, the said S. W. afterwards, and before the said time when, &c. during the lives of the said A. E. W. S. C. and W. F. to wit, on, &c. at, &c. in, &c. demised the said tithes, with the appurtenances, amongst other things, to the said Peter, to hold the same unto the said Peter from Michaelmas day then last past, according to the old stile and computation of time formerly used within this kingdom, unto the full end and term of ten years from thence next ensuing, and fully to be complete and ended if the estate of the said Sarah should so long therein continue, and which still doth continue; by virtue of which said last-mentioned demise the said Peter afterwards, and before the said time when, &c. to wit, on, &c. at, &c. in, &c. entered upon the said tithes, with the appurtenances, and from thenceforth until and at the same time when, &c. was and still is thereof possessed, and being so thereof possessed, the tithe of certain barley growing in and upon the said close in which, &c. in the said A. D. 1779, and which in that year before the said time when, &c. had been cut down and reaped before the said time when, &c. to wit, on, &c. was divided, reaped, and set out from the residue of the said barley there, and was lying and being there for the use of the said Peter, the farmer and occupier thereof as aforesaid; by reason whereof the said Peter, a little before the said time when, &c. to wit, on, &c. sent his servant and horses with the said two waggons in the said declaration mentioned into the said close in which, &c. for the purpose of taking and carrying away the said barley so as aforesaid divided, separated, and set out for the tithe aforesaid there then being and remaining as aforesaid, as it was lawful for him to do, and the said two waggons were in the said close in which, &c. on the occasion aforesaid, until the said Simon at the said time when, &c. took and unjustly detained the same against sureties and pledges, in manner and form as the said Peter hath above thereof complained against him; and this, &c.; wherefore, &c. and his damages by reason of the taking and unjust detaining of his said goods and chattels to be adjudged to him, &c.: And the said Peter, as to the said avowry of the said Simon by him secondly above made, &c. [same as the last, only pleading to the second avowry, without mentioning any thing of W. B.]

Plea in bar to the second avowry same, only omitting mention of the other co-tenant,

And the said Simon, as to the said plea of the said Peter by him above pleaded to the said avowry and cognizance of him the said Simon by him first above made, as to the said taking of one of the said two waggons in the said declaration mentioned, which in this replication is by the said Simon by way of distinction called, says, that he, by reason of any thing in that plea alleged, ought not to be barred from avowing and acknowledging of the taking of one of the said two waggons in the said declaration mentioned in the said place in which, &c. to be just;

Replication to the plea in bar to the first avowry, as to one of the waggons, admitting the plea, but that after the waggon was loaded it was detained an unreasonable length of time, therefore they took it doing damage to the grass and soil.

because

because he says, that true it is that the said M. late lord bishop of Ely in his lifetime, was seised as of fee and right in right of his said bishoprick of and in all and singular the tithes of corn yearly growing, coming, and renewing in and upon the said close in which, &c. and that he demised the same to the said E. W. his heirs and assigns, in manner and form as by the said plea in bar is above in that behalf alledged; and that the said E. W. died seised of the said tithes in manner and form as by the said plea in bar is above alledged; and that on the decease of the said E. W. the said tithes descended and came to the said S. W. and that the said S. W. was seised of the said tithes, and demised the same to the said Peter in manner and form as the said Peter hath above in his said plea in bar above alledged; and that the said Peter, by virtue of that demise, entered upon the said tithes, and until and at the said time when, &c. was and still is thereof possessed, and that being so thereof possessed, the tithe of certain barley growing in and upon the said close in which, &c. A. D. 1779, and which in that year before the said time when, &c. had been cut down and reaped, and was divided, separated, and set out from the residue of the said barley for the use of the said Peter, and that by reason thereof the said Peter, before the said time when, &c. sent his servants and horses with that said one of the two waggons in the said declaration mentioned into the said close in which, &c. for the purpose in the said plea in bar in that behalf mentioned, as the said Peter hath above in his said plea in bar in that behalf alledged: but the said Simon further saith, that one of the said waggons in the said declaration mentioned so being in the said close in which, &c. under the pretence aforesaid, after the same was so brought into the said close in which, &c. and before the said time when, &c. was there fully loaded with the said barley tithe, and that waggon so loaded as aforesaid was kept and detained by the said servants of the said Peter in the close in which, &c. for a long and unreasonable time, to wit, for the space of four hours next after the same was so loaded as aforesaid, and before the said time when, &c. was of the proper wrong of the said Peter in the said close, in which, &c. taking up room there and incumbering the said close, and doing damage there to the said Simon and W. B. for which reason the said Simon in his own right, and as bailiff of the said W. B. after that waggon had been so loaded as aforesaid, and after the end and expiration of a reasonable time was elapsed after the said loading of the said tithe barley, for the taking and removing that waggon out of the said close in which, &c. to wit, at the said time when, &c. in his own right, and as bailiff of the said William Bishop, took the said waggon, being one of the said waggons in the said declaration mentioned in the said close in which, &c. so taking up room there, and incumbering the said close, and doing damage there to the said Simon as a distress for the said damage so there done and doing by the said waggon, and detained the same until, &c. as the said Simon lawfully might for the cause aforesaid; and this, &c.; wherefore,
&c.

&c. and a return of that one of the said waggons, together with his damages, &c. according to the form of the statute to be adjudged to him, &c.: And the said Simon, as to the said plea of the said Peter by him above pleaded in bar, as to the said avowry and cognizance of the said Simon by him first above made as to the taking of the other of the two said waggons in the said declaration mentioned, says, that he, by reason of any thing in that plea alledged, ought not to be barred from avowing and acknowledging the said taking of that other of the said two waggons in the said place in which, &c. as just; because he says, that true it is that the said M. late lord bishop of Ely in his lifetime, was seised as of fee and right in right of his said bishoprick, of and in all and singular the tithes of corn yearly growing, coming, and renewing in and upon the said close in which, &c. and that he demised the same to the said E. W. his heirs and assigns, in manner and form as by the said plea in bar is above alledged, and that on the decease of the said E. W. the said tithes descended and came to the said S. W. and that the said S. W. was seised of the said tithes, and demised the same to the said Peter in manner and form as the said Peter hath above in his said plea in bar above alledged; and that the said Peter, by virtue of that demise, entered upon the said tithes until and at the said time when, &c. and was and still is so thereof possessed, and that being so thereof possessed, the tithe of certain barley growing in and upon the said close in which, &c. A. D. 1779, and which in that year before the said time when, &c. had been cut down and reaped, and was divided, separated, and set out from the residue of the said barley for the use of the said Peter, and that by reason thereof the said Peter, before the said time when, &c. sent his servants and horses with that other of the said two waggons in the said declaration mentioned, into the said place in which, &c. for the purpose in the said plea in bar in that behalf alledged: † But the said Simon further saith, that the said other of the said two waggons being so sent into the said close in which, &c. for the purpose and under the pretence aforesaid, and being under that pretence in the said close in which, &c. the said servants of the said Peter, at the said time when, &c. were of the proper wrong and injury of the said Peter, wantonly, wrongfully, and unlawfully driving the said other of the said two waggons in and about the said close in which, &c. in and upon other barley of the said Simon and W. B. then lying and being in the said close in which, &c. being other barley than such as had been so divided and separated from the rest thereof for tithes as aforesaid, and thereby that waggon was at the said time when, &c. doing damage there to the said Simon and W. B. for which cause the said Simon in his own right, and as bailiff to the said W. B. at the said time when, &c. took that other of the said waggons in the said close in which, &c. so doing damage there to the said W. B. and Simon, as in the replication is above alledged, as a distress for that damage so there done and doing by that waggon, and detained the same as such distress until, &c. as he the said Simon lawfully might for the cause aforesaid;

Replication as to the other waggon, that it was sent under a pretence, and that the servants drove it wantonly amongst the barley not set out for tithes.

Replication to the plea to the second avowry, as to the first waggon, that after it was loaded it was detained by the servants an unreasonable length of time, and after a reasonable time had elapsed, defendant took it as a distress for the damage.

Replication to the plea to the second avowry as to the other waggon, that it was in the close under a pretence, and of the proper wrong of the plaintiff.

aforesaid; and this, &c.; wherefore, &c. and a return of that one of the said two waggons, together with his damages, &c. according to the form of the statute, to be adjudged to him: And the said Simon, as to the said plea of the said Peter by him above pleaded in bar, as to the said avowry of him the said Simon by him secondly above made, as to the taking of the said first of the said two waggons in the said declaration mentioned, says, that he, by reason of any thing in that plea alledged, ought not to be barred from avowing the said taking of that said first of the said two waggons in the said place in which, &c. as just; because he says, that true it is, &c. &c. [exactly the same as the last down to this mark †, when proceed as follows]: But the said Simon further saith, that the said first one of the said two waggons so being in the said close in which, &c. and before the said time when, &c. was there fully loaded with the said tithe barley, and that the waggon, so loaded as aforesaid, was kept and detained by the said servants of the said Peter in the said close in which, &c. for a long and unreasonable time, to wit, for the space of four hours next after the same was so loaded as aforesaid, and before the said time when, &c. and during all that long and unreasonable time, and until the said time when, &c. was of the proper wrong of the said Peter in the said close in which, &c. taking up room there and incumbering the said close, and doing damage there to the said Simon, for which reason the said Samuel, after that one of the said two waggons had been so loaden as aforesaid, and after the end and expiration of a reasonable time was elapsed next after the loading of the said tithe barley, for the taking and removing that waggon out of the said close in which, &c. to wit, at the said time when, &c. took that said waggon, being one of the said waggons in the said declaration mentioned in which, &c. so taking up room there and incumbering the said close, and doing damage there to the said Simon as a distress for the damage so there done and doing by that waggon, and detained the same as such distress until, &c. as he lawfully might for the cause aforesaid; and this he is ready to verify; wherefore, &c. and a return of that one of the said two waggons, together with his damages, &c. according to the form of the statute, to be adjudged to him: And the said Simon, as to the said plea of the said Peter by him above pleaded in bar, as to the said avowry of him the said Simon by him secondly above made as to the taking of the said other of the said two waggons in the said declaration mentioned, says, that he, by reason of, &c. (same as the former, down to this mark †): But the said Simon further saith, that the said other of the said two waggons in the said declaration mentioned being so sent into the said close in which, &c. under the pretence, and for the purpose aforesaid, the said servants of the said Peter, at the said time when, &c. were in the said close in which, &c. wrongfully and injuriously, and of the proper wrong and injury of the said Peter, wrongfully, wantonly, injuriously, and unlawfully driving that said other of the said two waggons in and about the said close in which, &c. in and upon, and over other barley of the said Simon, then lying and being in the said

said close in which, &c. being other barley than such as had been or was so divided and separated from the rest thereof for tithes as aforesaid, and that waggon was thereby at the said time when, &c. doing damage there to the said Simon in the said close in which, &c. otherwise than as mentioned in that plea in bar in that behalf, for which reason the said Simon, at the said time when, &c. took that other of the said two waggons in the said close in which, &c. so doing damage there to the said Simon as in this replication is above alledged, as a distress for that damage so there done and doing by that waggon, and detained the same as such distress until, &c. as he the said Simon lawfully might for the cause aforesaid; and this, &c.; wherefore, &c. and a return of that other of the said waggons, together with his damages, &c. according to the form of, &c. to be adjudged to him, &c.

And the said Peter, as to the said plea of the said Simon by him above pleaded, in reply to the said plea of the said Peter by him above pleaded in bar to the said avowry and cognizance of the said Simon by him first above made, as to the said taking of one of the said two waggons in the said declaration mentioned, says, that the said Simon, by reason of any thing in his said plea so pleaded in reply, ought not in his own right to avow, nor as bailiff of the said W. B. to acknowledge the taking the said one of the said two waggons in the said close in which, &c. to be just; because he the said Peter says, that the said Simon, at the said time when, &c. in the said close in which, &c. of his own wrong, and without any such cause as is by him in the said plea so first above pleaded in reply alledged, took and unjustly detained the said one of the said two waggons in manner and form as the said Peter in his said declaration above thereof complains against him the said Simon; and this the said Peter prays may be enquired of by the country, and the said Simon doth the like; and the said Peter, as to the said plea of the said Simon, &c. [*De injuria* to the other three replications.]

Rejoinder to the last replication, *de injuria sua propria* as to the other replications, and issue thereon.

LIDDIARD } AND the said Francis, by Andrew Innys his attorney, comes and defends the force and injury, *Avowry for damage feasant in his freehold.*
 and }
 CRESWICK. } when, &c. and well avows the taking of the cattle aforesaid in the said place in which, &c. unjustly, &c.; because he says, that the same place in which, &c. is known, and at the said time when, &c. and long before, was known as well by the name of Hannam's Common as by the name of Hannam's Heath, and contains at the same time when, &c. in itself fifty acres of pasture, with the appurtenances, in the said parish of Bitton, in the said county of Gloucester; which said fifty acres of pasture, with the appurtenances, are, and at the same time when, &c. were the soil and freehold of him the said Francis; and because the cattle aforesaid, at the said time when, &c. were in the said

said place in which, &c. eating up the grafs there then growing, and doing damage there, the same Francis, in his own proper right, well avows the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. so doing damage there; and this he is ready to verify; wherefore he prays judgment and a return of the cattle aforesaid, together with his damages, costs, and charges in this behalf sustained, according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

Bar, that T. M. was seised in fee, and demised to W. L. and the plaintiff for their lives.

And the said John Liddiard says, that the said Francis, for the reason before alledged, the taking of the cattle aforesaid in the said place in which, &c. ought not to avow just; because by protesting that the same place in which, &c. at the said time when, &c. was not the freehold of him the said Francis as is above supposed; for plea the same John says, that long before the said time of the taking of the cattle aforesaid in the said place in which, &c. to wit, on the twenty-first day of August, in the tenth year of the reign of the lord James, late king of England, &c. Theodore Newton, knight, was seised in his demesne as of fee of and in one messuage and forty-seven acres and a half of land, arable, meadow, and pasture, with the appurtenances, in Hannam and Bitton, in the parish of Bitton aforesaid, in the county aforesaid; and being so thereof seised afterwards, to wit, on the said twenty-first day of August, in the tenth year of the reign of the lord James, late king of England aforesaid, at Bitton aforesaid, in the county aforesaid, demised the messuage aforesaid, and the said forty-seven acres and a half of land, arable, meadow, and pasture, with the appurtenances, to William Liddiard and Katharine his wife, and him the said John Liddiard, to hold to the said William Liddiard and Katharine his wife for and during the term of their natural lives, and the natural life of the longer liver of them, and after their decease, the remainder thereof to the said John Liddiard for and during the term of the natural life of him the said John; by virtue of which said demise the same William and Katharine afterwards, to the said messuage and the said forty-seven acres and a half of land, arable, meadow, and pasture, with the appurtenances, were seised in their demesne, as of freehold, for the term of their lives and the life of the longer liver of them, the remainder thereof after their decease to the said John for the term of his life so as aforesaid belonging; and the said William and Katharine being so thereof seised, afterwards, to wit, on the first day of September, in the thirty-second year of the reign of the lord Charles the Second, now king of England, &c. at Bitton aforesaid, in the county aforesaid, died thereof seised; after the death of which, the said William and Katharine, he the said John, as in his remainder aforesaid, afterwards, to wit, on the said first day of September, in the thirty-second year of the reign of the lord Charles the Second, now king of England, &c. at Bitton aforesaid, in the county aforesaid, into the messuage aforesaid, and the said forty-seven acres and a half of land, arable, meadow, and pasture,

pasture, with the appurtenances, by virtue of the demise aforesaid entered, and was and is yet thereof seised in his demesne as of freehold for the term of his life: And the same John further says, that at the time of the demise aforesaid made, he the said Theodore Newton, and all those whose estate the same Theodore then had of and in the said messuage and forty-seven acres and a half of land, arable, meadow, and pasture, with the appurtenances, have had, and for time out of mind have been accustomed to have for themselves, their farmers, and tenants of the said messuage, and the said forty-seven acres and a half of land, arable, meadow, and pasture, with the appurtenances, common of pasture in the said place in which, &c. for all their commonable cattle in and upon their tenements aforesaid, with the appurtenances, levant and couchant every year at all times of the year, as to their tenements aforesaid belonging and appertaining; by reason whereof the said John, before the said time when, &c. to wit, on the ninth day of September, in the thirty-third year of the reign of the said lord the now king, the cattle aforesaid in the declaration aforesaid above specified, being then the proper cattle of him the said John, upon the said forty-seven acres and a half of land, arable, meadow, and pasture, with the appurtenances, then levant and couchant, into the said common called Hannam's Common, being the place in which, &c. put as he well might to use his common aforesaid, and the said Francis the said cattle, to wit, the said thirty sheep in the said place in which, &c. put feeding on the grass there growing, and using the common of pasture of him the said John there afterwards, at the said time when, &c. to wit, on the tenth day of September, in the thirty-third year aforesaid, at Bitton aforesaid, in the said place in which, &c. commonly called Hannam's Common, took, and then unjustly detained, against sureties and pledges, in manner and form as the said John above against him complains; and this the same John is ready to verify; wherefore he prays judgment and his damages by reason of the taking and unjust detention of the cattle aforesaid to be adjudged to him, &c.

Prescription of common.

And the said Francis Creswick (as before) says, that the said fifty acres of pasture called Hannam's Common, otherwise Hannam's Heath, are, and at the same time when, &c. were the soil and freehold of him the said Francis; and because the cattle aforesaid, at the said time when, &c. were in the same place in which, &c. eating up the grass then there growing, and doing damage there, the said Francis the same cattle took as he hath above alledged; without that, that the said Theodore, and all those whose estate the same Theodore then had of and in the said messuage and forty-seven acres and a half of land, arable, meadow, and pasture, with the appurtenances, have had, and from time out of mind have been accustomed to have for themselves, their farmers, and tenants of the said messuage and the said forty-seven acres and a half of land, arable, meadow, and pasture, with the appurtenances,

Replication, that it is his freehold.

Traverse of the prescription.

Issue on the
traverse.

nances, common of pasture in the said place in which, &c. for all their commonable cattle in and upon their tenements aforesaid, with the appurtenances, levant and couchant every year at all times of the year, as to their tenements aforesaid belonging and appertaining, as the said John in bar to the avowry aforesaid hath above alledged; and this he is ready to verify; wherefore he prays judgment and a return of the cattle aforesaid, together with his damages, &c. to be adjudged to him, &c.: And the said John Liddiard (as before) says, that the said Theodore Newton, and all those whose estate the said Theodore then had in the said messuage and forty-seven acres and a half of land, arable, meadow, and pasture, with the appurtenances, have had, and from time out of mind have been accustomed to have for themselves, their farmers, and tenants of the said messuage and the said forty-seven acres and a half of land, arable, meadow, and pasture, with the appurtenances, common of pasture in the said place in which, &c. for all their commonable cattle in and upon their tenements aforesaid, with the appurtenances, levant and couchant every year at all times of the year, as to their tenements aforesaid belonging and appertaining in manner and form as he the said John Liddiard have above alledged; and this he prays may be enquired of by the country, and the said Francis likewise; therefore the sheriff is commanded that he cause to come before the lord the king in the octave of St. Hilary, wheresoever, &c. twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties aforesaid, &c.

An avowry to a
declaration in
replevin by free-
holder damage
feasant.

BROWNE } AND the said Robert, by, &c. his attor-
at the suit of } ney, comes and defends the force and injury,
CLIFFORD. } when, &c. and well avows the taking of the said
cattle in the said place in which, &c. and justly, &c.; because he
says, that the said R. long before the said time when the said cat-
tle is above supposed to have been taken, and at the said time
when, &c. was and yet is seised in his demesne as of fee of and
in the said place called Tovey Reddings, in which, &c. and being
so thereof seised, because that the said cattle, at the said time when,
&c. were in the said place in which, &c. feeding on the grass of
the said Robert there then growing, and doing damage there to the
said R. he the said R. well avows the taking of the said cattle in
the said place in which, &c. at the said time when, &c. then and
there so feeding on the grass of the said B. there then growing,
and so doing damage there to the said R. B. and justly, &c.; and
this he is ready to verify; wherefore he prays judgment and a re-
turn of the cattle, together with his damages, &c. according to
the form of the statute, &c.: And the said R. further, by leave
of the court here for that purpose first had and obtained, accord-
ing to the form of the statute in such case made and provided, as
to the taking of one heifer, part of the said cattle in the said de-
claration mentioned, says, that that heifer, at the said time when
the

the same was so taken, was the property of one Samuel Cliffold; without this, that that heifer, at the said time when, &c. was the property of the said Nathaniel; and this he is ready to verify; wherefore he prays judgment if the said Nathaniel ought to have his said action thereof against him; and he also prays judgment and a return of the said one heifer, together with his damages, costs, and charges in this behalf sustained, according to the form of the statute in such case made and provided, to be adjudged to him, &c.

W. HAYWARD.

And the said Nathaniel, as to the said plea of the said Robert first above pleaded, saith, that the said R. by reason of any thing in his said plea first pleaded above alledged, ought not to avow the taking of the said cattle in the said place in which, &c. to be just; because he saith, that he the said Nathaniel, long before, and at the said time when, &c. was and yet is lawfully possessed of and in a certain close of land, with the appurtenances, called the Great Hedge, in the parish of B. aforesaid, lying contiguous and next adjoining to the said place in which, &c.; and that the said R. and all other the farmers, tenants, and occupiers of the said place in which, &c. for the time being respectively, from time whereof the memory of man is not to the contrary, until the defect thereof hereinafter mentioned, have maintained and repaired, and have used and been accustomed to maintain and repair, and the said R. still of right ought to maintain and repair the fence between the said place in which, &c. and the said close of the said N. called the Great Hedge, when and as often as occasion hath required, to prevent cattle feeding and depasturing in the great close called the Great Tynning from escaping into the said close in which, &c. for want of a sufficient fence; and the said N. being so possessed of and in the said close called Great Tynning, with the appurtenances, he the said N. before the said time when, &c. put his said cattle into the said close called Great Tynning to depasture the grass there then growing, as it was lawful for him to do: And the said N. further says, that the fence between the said close called Great Tynning, and the said place in which, &c. at the said time when, &c. was ruinous and in great decay for want of necessary repairing and amending thereof; by reason whereof the said cattle of the said N. depasturing the grass in the said close called Great Tynning, then growing for want of a sufficient fence between the said place in which, &c. and the said close called Great Tynning, at the said time when, &c. against the will of the said N. escaped from the said close called Great Tynning into the said place in which, &c. and depastured the grass there then growing until the said R. afterwards and before the said N. had notice of the said cattle being so escaped as aforesaid, to wit, on the said twenty-sixth day of May, in the year aforesaid, of his own wrong took the said cattle in the said place in which, &c. and unjustly detained them against sureties and pledges until, &c. in manner and form as the said N. hath above in his said declaration in that

behalf alledged; and this he is ready to verify; wherefore since that the said R. hath above acknowledged the taking of the said cattle, the said N. prays judgment and his damages by reason of the taking and unjustly detaining of the same cattle to be adjudged to him, &c.: And the said N. as to the said plea of the said R. by him lastly above pleaded, as to the taking of one heifer, part of the said cattle in the said declaration mentioned, says, that the said R. by reason of any thing by the said R. in his said plea in that behalf above alledged, ought not to justify or avow the taking of the said one heifer, part of the said cattle in the said declaration mentioned, to be just; because he saith, that the said four heifers in the said declaration mentioned, and each and every of them at the said time when, &c. was the property of the said N. as by the said writ and declaration aforesaid is above supposed; and this he prays may be enquired of by the country; and the said R. doth the like, &c.

D. POOLE.

Replication to
the above plea.

And the said R. as to the said plea of the said N. by him above pleaded in bar to the said avowry, says, that he, by any thing therein contained, ought not to be barred from avowing the said taking of the said cattle in the said place in which, &c. as just, or from having a return of the said cattle; because he says, that true it is that the said R. and all other farmers, tenants, and occupiers of the said close in which, &c. for the time being respectively from time whereof the memory of man is not to the contrary, have maintained and repaired, and have been used and accustomed to maintain and repair, and that the said R. still ought to maintain and repair the fence between the said place in which, &c. and the said close called Great Tynning when and as often as occasion hath required, to prevent cattle depasturing in the said close called Great Tynning from escaping into the said close called Great Hedge, in which, &c. for want of a sufficient fence between those closes as the said N. hath above in pleading alledged; yet for replication in this behalf the said R. says, that the said fence between the said place in which, &c. and the said close called Great Tynning before the said time when, &c. to wit, on the same day and year in the said declaration mentioned, was in good, necessary, and tenantable repair, and sufficient to prevent cattle depasturing in the said close called Great Tynning from escaping thereout into the said place in which, &c.; and that the said fence so being in good, necessary, and tenantable repair, and sufficient for the purpose aforesaid, he the said N. afterwards, and before the said time when, &c. to wit, on the same day and year in the said declaration at the parish aforesaid, of his own wrong, with force and arms pulled down and prostrated a great part of the said fence, and made gaps and breaches therein, and that the said cattle, before the said time when, &c. to wit, on the same day and year aforesaid, of wrong and injury of the said N. escaped out of the said close called Great Tynning, through those gaps and breaches so made or caused to be made in the said fences by the said N. or through

through some or one of them into the said place in which, &c. and on that occasion were in the said place in which, &c. depasturing the grafs there growing, and doing damage there to the said R. from thence until the said R. at the said time when, &c. took the said cattle in the said place in which, &c. so depasturing on the grafs there then growing, and so doing damage there to the said R. as the said R. hath above in his said avowry alledged; and this he is ready to verify; wherefore as before he prays judgment and a return of the said cattle, together with his damages, &c. according to the form of the statute, &c. to be adjudged to him, &c.

W. HAYWARD.

And the said N. as before says, that the said fence between the said place in which, &c. and the said close called Great Tynning at the said time when, &c. was ruinous and in great decay for want of necessary repairing and amending thereof, by reason whereof the said cattle of the said N. depasturing the grafs in the said close called Great Tynning into the said place in which, &c. and depastured the grafs there then growing in manner and form as the said N. hath above alledged; without this, that the said N. before the said time when, &c. pulled down and prostrated any part of the said fence, or made gaps and breaches therein in manner and form as the said R. in his said replication in this behalf hath above alledged; and this he is ready to verify; wherefore since the said Robert hath above acknowledged the taking of the said cattle, the said N. as before prays judgment and his damages, by reason of the taking and unjustly detaining the said cattle, to be adjudged to him, &c.

Rejoinder to the above replication.

D. POLE.

And the said R. as before says, that the said N. before the said time when, &c. to wit, on the same day and year aforesaid, at the parish aforesaid, pulled down and prostrated great part of the said fence, and made gaps and breaches therein in manner and form as the said R. in his said replication in that behalf hath above alledged; and of this he puts himself upon the country, and the said N. doth the like, &c.; therefore as well to try this issue as the said other issue above joined between the said parties, the said sheriff is commanded that he cause to come here on the octave of the Purification of the Blessed Virgin Mary twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Surrejoinder to the above rejoinder.

AVOWRIES, COGNIZANCES, &c. UNDER DEMISES. DAMAGE FEASANT.

MEAD AND ANOTHER
at the suit of

MAIDWELL, ESQUIRE.

AND the said John and Aaron, by Thomas Roberts their attorney, come and defend the force and injury, when, &c. and pray judgment of the declaration aforesaid; because they say, they took the sheep aforesaid at Gaddington aforesaid, in a

Plea in abatement, that the taking was in another place.

Traverse.

Cognizance as
bailiffs to J. H.
for damage fea-
sant.

Seisin in fee.

Demise to T. H.

Entry.

Distress.

Issue on the tra-
verse.

certain place called Brook Furlong, in a certain parcel thereof, containing by estimation three acres of land; which said place called Brook Furlong whereof, &c. is, and for time immemorial was parcel of a certain great field called Mill Field, in Gaddington afore said, containing by estimation one hundred acres; without that, they took the sheep afore said in the said place called Kettering Blake, as the said Thomas by his declaration afore said above supposes; and this they are ready to verify; wherefore they pray judgment of that declaration, &c. and to have a return of the sheep afore said, the same John and Aaron, as bailiffs of one John Hemes, well acknowledge the taking of the sheep afore said in the said three acres of land in the said place called Brook Furlong, and justly, &c.; because they say, that long before the said time when, &c. to wit, on the last day of March, in the year of Our Lord 1703, and always from thence afterwards hitherto, one Cæsar Child, bart. was and yet is seised of and in the said three acres of land, in which they took the sheep afore said in his demesne as of fee; and being so thereof seised, he the said Cæsar Child, before the said time when, &c. to wit, the same day and year afore said, at G. afore said, demised to the said John Hemes (among others) the said three acres of land, with the appurtenances, to have and to hold to the said John Hemes from the feast day of the Annunciation of the Blessed Virgin Mary then last past unto the full end and term of three years then next ensuing, and fully to be complete and ended, and from thence from year to year as long as both parties should please, at and under a certain yearly rent between them agreed to be paid; by virtue of which said demise the said John Hemes afterwards, and before the said time when, &c. into the said three acres of land in which, &c. above demised and entered, and always from thence afterwards hitherto was, and yet is thereof possessed at the will of the said Cæsar Child and John Hemes; and because the sheep afore said at the said time when, &c. were in the said three acres of land, parcel of the said place called Brook Furlong, eating up the grass then there growing, and doing damage there, the said John Mead and Aaron, as bailiffs of the said John Hemes, well acknowledge the taking of the sheep afore said in the said three acres of land in the said place called Brook Furlong, and justly, &c. so doing damage there, &c.

And the said Thomas Maidwell says, that his declaration afore said for the reason before alledged, ought not to be quashed; because he says, that the said John and Aaron took the sheep afore said in the said place called Kettering Blake, as he hath above declared; and this he prays may be enquired of by the country, and the said John and Aaron likewise, &c.; therefore the sheriff is commanded that he cause to come here from the day of the Holy Trinity in three weeks twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties, &c.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and well avows the taking of the said cattle in the said place in which, &c. and justly, &c.; because he says, that *the said place in which, &c. contains, and at the said time when, &c. contained thirty acres of land, with the appurtenances; which said thirty acres of land in which, &c. are, and at the said time when, &c. and also from time immemorial* were parcel of the manor of L. being in the county and customary land of the same manor, and demised and demiseable by copy of court roll of that manor, by the lord, or lords, lady or ladies of the same manor, to any person or persons willing to take the same in fee simple or otherwise, at the will of the lord or lords, lady or ladies of the said manor, according to the custom of the same manor: And the said defendant further says, that the honourable M. L. before the said time when, &c. to wit, on, &c. was lawfully lady of the said manor, and the said M. L. so being lady of the said manor, she the said M. L. afterwards, and before the said time when, &c. to wit, on, &c. at, &c. by copy of the court roll of the said manor, granted the said thirty acres of land, with the appurtenances, in which, &c. (amongst other things) to one C. W. to hold to him the said C. W. his heirs and assigns for ever, at the will of the lord or lady, according to the custom of the said manor; and the said C. W. according to the custom of the said manor, was then and there admitted tenant thereof; and the said C. W. by virtue of the grant and admission aforesaid, before the said time when, &c. to wit, on, &c. entered into the said thirty acres of land, with the appurtenances (amongst other things) and was seised thereof in his demesne as of fee at the will of the lord or lady, according to the custom of the said manor; and the said C. W. being so seised as aforesaid, he the said C. W. afterwards, and before the said time when, &c. to wit, on, &c. at, &c. demised the said thirty acres in which, &c. with the appurtenances (amongst other things) unto the said defendant, to have and to hold the same to him the said defendant from the day and year aforesaid, for and during, and unto the full end and term of three years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise he the said defendant afterwards, and before the said time when, &c. to wit, on, &c. entered into the said thirty acres in which, &c. with the appurtenances, and became and was, and continually from thenceforth hitherto hath been, and still is possessed thereof; and because the said mare in the said declaration mentioned, at the said time when, &c. was in the said thirty acres in which, &c. treading down and eating up the beans and grass of the said defendant there then growing, and there doing damage to the said defendant, he the said defendant well avows the taking of the said mare in the said place in which, &c. so doing damage there, and justly, &c. as and for a distress for that damage, &c.; and this, &c.; wherefore, &c. and a return of the said mare, together with his costs and charges to be adjudged

Avowry, that the locus in quo is part of the manor of L. and that defendant is tenant for years, that he took the mare as a distress, damage feasant therein.

REPLEVIN.—AVOWRY, &c. UNDER DEMISES,

adjudged to him, according to the form of the statute in such case made and provided.

V. GIBBS.

Replication, *de injuria, &c.*

Traverse.

And the said plaintiff saith, that the said defendant, by any thing in the above avowry alledged, ought not to avow the taking of the said mare in the said place in which, &c. and justly, &c.; because he saith that the said defendant at the said time when, &c. of his own wrong took the said mare in the said declaration mentioned, and unjustly detained the same against gages and pledges until, &c. in manner and form as the said plaintiff hath above thereof complained against him, &c. without this; that the said place in which, &c. is parcel of the said thirty acres in the said avowry mentioned, as the said Richard hath above alledged, &c.; and this, &c.; wherefore since the said defendant hath above acknowledged the taking of the said mare in which, &c. the said plaintiff prays judgment and his damages by reason of the taking and unjustly detaining the said mare to be adjudged to him, &c.

JOHN LANE.

Avowry and cognizance by two persons, one in his own right, and the other as his bailiff and bailiff to a third person, who, together with the former, were tenants from year to year at will of both parties, to a tenant for life, that they took the gelding damage feasant.

AND the said Thomas Hodson and Sarah his wife, by A. B. their attorney, come and defend the wrong and injury, when, &c. and the said T. H. in his own right well avows, and the said Sarah, as bailiff of the said T. H. and one T. W. well acknowledges the taking of the said gelding in the said place in which, &c. and justly, &c.; because they say, that one sir J. G. long before, and at the said time when, &c. was, and still is, seised in his demesne as of freehold, for the term of his natural life, of and in twenty-seven undivided parts or shares (the whole into one hundred and seven parts or shares to be divided) of the said place in which, &c.; and being so seised thereof he the said sir J. G. afterwards, and before the said time when, &c. to wit, on, &c. at, &c. demised the said twenty-seven undivided parts or shares of the said place in which, &c. unto the said T. W. and T. H. to hold the same from for the space of one year, and so from year to year, for so long as it should please the said sir J. G. the said T. H. and T. W.; by virtue whereof the said T. H. and T. W. afterwards, to wit, on, &c. entered into the said demised premises, and were, and from thenceforth hitherto have been, and still are, lawfully possessed thereof; and being so possessed thereof, because the said gelding, at the said time when, &c. was in the said place in which, &c. depasturing the grafs there then growing, and doing damage there, the said T. H. in his own right well avows, and the said Sarah, as the bailiff of the said T. H. and T. W. and by their command well acknowledges the taking of the said gelding in the said place

ad. That A. B. in which, &c.; so doing damage there, &c.: And for a further was seised in fee

of a messuage and lands, and entitled to a very particular right of common for particular cattle, from such to such a time in a year, and demised same to avowant and his co-tenant, and because the cattle were trespassing at the said time when, &c. being a time within, &c. they justify taking them damage feasant.

avowry

avowry and cognizance in this behalf, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, the said T. H. in his own right well avows, and the said Sarah, as bailiff of the said T. H. and T. W. well acknowledges the taking of the said gelding in the said place in which, &c. ; because they say, that the said sir J. G. long before, and at the said time when, &c. was, and still is, seised of and in a certain messuage, and divers, to wit, one hundred and forty acres of land, with the appurtenances, called Fox Farm, situate and being in the township aforesaid, in his demesne as of fee ; and that he the said sir J. G. and all those whose estate he now hath, and at the said time when, &c. had, of and in the said messuage and land, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and have been used, and been accustomed to have and use, and during all the time aforesaid, of right ought to have had and used, and still of right ought to have and use, for himself and themselves, his and their farmers and tenants, occupiers of the said messuage and land, with the appurtenances, common of pasture in the said place in which, &c. in manner, that is to say, for twenty oxen and cows, or in lieu of each such ox or cows for two calves and one foal, or in lieu of every two, or any two of the said twenty oxen or cows for one mare or one gelding, at his or their election yearly and every year, from the feast of according to the old stile and computation of time used within this kingdom, until the feast of according to the same stile and computation of time, as to the said messuage *and land*, with the appurtenances, belonging and appertaining ; and the said sir J. G. being so seised thereof, afterward, and before the said time when, &c. to wit, on, &c. A. D. 1784, at the township aforesaid, demised the said messuage *and land*, with the appurtenances, unto the said T. H. and T. W. to hold the same in manner following, that is to say, *the said land, with the appurtenances, from the thirteenth day of February then next, and the said messuage, with the appurtenances, from the twelfth day of May then next* for the space of one year from thence respectively next following, and so from year to year for so long time as it should please the said sir J. G. and the said T. H. and T. W. ; by virtue whereof the said T. H. and T. W. afterwards, to wit, on, &c. entered into the said messuage *and land*, with the appurtenances, and became, and were, and from thenceforth hitherto have been, and still are, lawfully possessed thereof ; and being so possessed thereof, because the said gelding, at the said time when, &c. (being between the feast of and the feast of , was in the said place in which, &c. depasturing the grass there then growing, and doing damage there, so that the said T. H. and T. W. could not at the said time when, &c. have or enjoy their said common of pasture in the said place in which, &c. in so large and beneficial a manner as they then and there of right ought to have done, he the said T. H. in his own right well avows, and

the said Sarah, as the bailiff of the said T. H. and T. W. well acknowledges the taking of the said gelding in the said place in which, &c. doing damage there, &c.: And for a further avowry and cognizance, and cognizance in this behalf, by like leave of, &c. according to, same as last, &c. the said T. H. in his own right well avows, and the said Sarah, only prescribes as, &c. well acknowledges the taking of the said gelding in the in respect of a messuage instead of a messuage and lands. the said place in which, &c. and justly, &c.; because they say, that the said sir J. G. long before, and also at the said time when, &c. was, and still is, seised of and in a certain other messuage, with the appurtenances, situate and being in the township aforesaid, in his demesne as of fee, and that he the said sir J. G. and all those whose, &c. had of and in the said last-mentioned messuage, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and used, and been used, and accustomed to have and use, during all the time aforesaid, and of right ought, &c. &c. [same as the second, only omitting what is in Italic]. [4th Avowry like the second, claiming the common only for twenty oxen or cows. 5th Like the fourth, but claiming the common only for twenty cows or oxen in right of the messuage only.]

W. LAMBE.

Declaration (in replevin), for taking a gelding and a mare, in B. R.

SOMERSETSHIRE, to wit. William Cullen was summoned to answer George Norman of a plea, wherefore he took the cattle of the said George, and them unjustly detained against gages and pledges, until, &c. and whereupon the said George, by A. B. his attorney, complains; for that the said William, on, &c. at, &c. in, &c. in a certain place there called the Higher Monkey Lease, took the cattle following, to wit, one gelding and one mare of the said George, and them unjustly detained against sureties and pledges, until, &c. wherefore the said George saith that he is injured, and has damage to the value of twenty pounds; and therefore he brings suit, &c.

N. GROSE.

Avowry, damage feasant, stating defendant to be possessed generally.

And the said William, by C. D. his attorney, comes and defends the wrong and injury, when, &c. and well avows the taking of the said cattle in the said place in which, &c. and justly, &c.; because he says, that he the said William, before, and at the time when, &c. and long afterwards, was lawfully possessed of and in the said place, called Higher Monkey Lease, in the parish of A. aforesaid; and because the said cattle, at the said time when, &c. were wrongfully in the said place in which, &c. feeding on the grass there then growing, and doing damage there to the said William, he the said William well avows the taking of the said cattle in the said place in which, &c. as and for a distress for the damage so there done and doing by the said cattle; and this, &c.; where-

wherefore, &c. and a return of the said cattle, together with his damages, costs, and charges, according to the form of the statute in that case made and provided, to be adjudged to him, &c.

J. MORGAN.

DAVIES } SHROPSHIRE, to wit. William Andrews
against } was summoned to answer Edward Davies, &c. for
ANDREWS. } taking one bay mare at the township of Longdon,
within the parish of Pentestbury, in the said county, in a certain
place there called Pound Yard or Dorset's Yard.

And the said William, by A. B. his attorney, comes and de- Avowry, that
fends the wrong and injury, when, &c. and well avows the tak- lord T. seised of
ing of the said mare in the said declaration mentioned, in the said locus and demis-
place in which, &c. justly, &c.; because he says, that the right ed same to R. P.
honourable Charles earl of Tankerville, long before, and at the as tenant from
said time when, &c. was seised of and in the said place in which, year to year,
&c. with the appurtenances, in his demesne as of fee; and being that R. P. de-
so seised, he the said earl, long before the said time when, &c. mised to defend-
to wit, on the second of February 1784, demised the said place in ant for one year,
which, &c. with the appurtenances, to one Richard Price, now de- and because the
ceased, to have and to hold the said place in which, &c. with the mare was da-
appurtenances, to the said Richard Price for one whole year from mage feasant
thence next ensuing and fully to be complete and ended, and so well avows, &c.
from year to year for so long a time as it should please the said earl
and the said Richard Price; by virtue of which demise he the said
R. P. afterwards, and long before the said time when, &c. to wit,
on the same day and year aforesaid, entered into the said place in
which, &c. with the appurtenances, and became and was possessed
thereof for the said time; and being so possessed thereof, he the
said R. P. afterwards, and long before the said time when, &c.
to wit, on the same day and year last aforesaid, demised the said
place in which, &c. with the appurtenances, to the said William,
to have and to hold the said place in which, &c. with the appurte-
nances, unto the said William for one whole year from thence
next ensuing; by virtue whereof he the said William afterwards,
and long before the said time when, &c. to wit, on the same day
and year last aforesaid, entered into the said place in which, &c.
with the appurtenances, and became, and until and at the said time
when, &c. was possessed thereof; and because the said mare in
the said declaration mentioned, at the said time when, &c. was
wrongfully and injuriously in the said place in which, &c. was
eating and depasturing the grass there then growing, and doing
damage there, he the said William well avows the taking of the
said mare in the said place in which, &c. and justly, &c. for and in
the name of a distress for the said damage so by the said mare then
and there done and doing to the said William; and this, &c.;
wherefore he prays judgment and a return of the said mare, to-
gether

gether with his damages, costs, and charges in this behalf, according to the form of the statute in such case made and provided, to be adjudged to him, &c.

FOSTER BOWER.

Plea in bar admits lord T.'s seisin, and the demise to R. P. and the demise to defendant, but protesting that defendant at the time when, &c. was not possessed, but says that defendant demised to plaintiff to hold, &c. who entered, and at the time when, &c. was possessed thereof, and put in his cattle, until defendant *de injuria sua*, &c.

And the said Edward, as to the said avowry of the said William by him above made, says, that he by reason of any thing in the said avowry contained ought not to avow the taking of the said mare of the said Edward in the said declaration mentioned, in the said place in which, &c. to be just, &c.; because he says, that true it is, that the said right honourable Charles earl of T. was seised of and in the said place in which, &c. with the appurtenances, in his demesne as of fee, as the said W. has in his said avowry alledged, and that being so seised he the said earl demised the said place in which, &c. with the appurtenances, to the said R. Price, as in the said avowry is also alledged; and that he the said R. P. afterwards demised the said place in which, &c. with the appurtenances, to the said William, as in the said avowry is also alledged, and that he the said William entered into the said place in which, &c. with the appurtenances, in manner and form as the said William has above in his said avowry alledged; but protesting that the said William was not at the said time when, &c. possessed of the said place in which, &c. in manner and form as the said William hath in his said avowry alledged: for plea in this behalf, the said Edward further says, that long before the said time when, &c. and during the term so demised by the said R. P. to the said William, to wit, on the sixteenth of November 1784, at the township of Longdon, within the parish of Pentesbury, in the said county of Salop, he the said William demised the said place in which, &c. with the appurtenances, to the said Edward, to have and to hold the same to the said Edward from the said sixteenth of November in the same year, until and upon the feast-day of the Annunciation of the Blessed Virgin Mary then next coming and fully to be complete and ended, at and under a certain rent to be therefore paid by the said Edward to the said William; by virtue of which said demise he the said E. long before the said time when, &c. to wit, on the same day and year last aforesaid, entered into the said place in which, &c. with the appurtenances, and became, and until and at the said time when, &c. was possessed thereof, and being so possessed thereof he the said E. afterwards, and during the continuance of the said demise from the said William to the said E. made as aforesaid, and before the said time when, &c. to wit, on the said nineteenth of November 1784, put the said mare in the said declaration mentioned in the said place in which, &c. to feed and depasture on the grass there then growing, and which said mare was in and upon the said place in which, &c. feeding and depasturing on the grass there then growing, from thence until the said William of his own wrong, at the said time when, &c. being during the continuance of the said demise from the said William to the said Edward made as aforesaid

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at the township of Longdon aforesaid, in the county aforesaid, took the said mare in the said declaration mentioned, in and upon the said place in which, &c. and detained her against sureties and pledges, until, &c. in manner and form as the said Edward hath above thereof complained against him; and this, &c.; wherefore inasmuch as the said William hath above acknowledged the taking of the said mare in and upon the said place in which, &c. he the said Edward prays judgment and his damages by reason of the taking and unjustly detaining the said mare to be adjudged to him, &c.

EDWARD LAW.

And the said William, as to the said plea of the said Edward by him above pleaded in bar to the said avowry of him the said William by him above made, says, that he by reason of any thing in that plea contained ought not to be barred from having and maintaining his said avowry against him the said Edward; because he says, that true it is that he the said W. demised to the said E. the said place in which, &c. with the appurtenances, and that the said E. thereupon entered into the same in manner and form as the said E. hath in his said plea by him above pleaded in bar alledged; but the said W. further says, that at the said demise so made by the said W. to the said E. as aforesaid, was made by him the said W. to the said E. in consideration of a certain sum of money paid for the same by the said E. to the said W. and upon this express proviso, condition, and agreement, that is to say, that if any cattle of and belonging to one Thomas Thompson, of the parish of Pentesbury, in the said county, should be turned into the said place in which, &c. with the appurtenances, to feed and depasture there, that then, and in such case, the said demise, so made by the said W. to the said E. should be from thenceforth wholly void, and cease, and be determined; and that thereupon, and immediately from and after the repayment by the said W. to the said E. of the said sum of money so paid by the said E. to the said W. upon the granting of the said demise, and in consideration of the same, then that it should and might be lawful to and for him the said W. to re-enter in and upon the said place in which, &c. with the appurtenances, and to have, hold, repossess, enjoy, and retain the same as his own former estate, without any regard being had to the said demise thereof so made by the said W. to the said E. to which said proviso, condition, and agreement, so made as aforesaid, at the time of the granting such demise of the said place in which, &c. to the said E. he the said E. fully assented: And the said W. further says, that after the making of the said demise and agreement so made as aforesaid, and after the entry of the said E. into and upon the said place in which, &c. and so demised to him in manner and upon the proviso, condition, and agreement aforesaid, and during the continuance of the said demise so made by the said W. to the said E. as aforesaid, and long before the said time when, &c. to wit, on the seventeenth of November 1784, divers cattle, to wit,

Replication, admits the demise to defendant, but says it was made in consideration of a sum of money paid by plaintiff to defendant, and under a proviso, that if the cattle of one A. B. were turned into *locus*, the demise should be void, and upon defendant's repaying consideration money he might re enter; the cattle of A. B. were turned into *locus*, defendant tendered the consideration money, and re-entered, and because the cattle were damaged &c.

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one cow and two calves of and belonging to the said Thomas Thompson, were turned into the said place in which, &c. and were then and there fed, and depastured there, with the privilege, consent, and licence of him the said Edward; thereupon the said demise, so made by the said W. to the said E. as aforesaid, became wholly void, and ceased, and determined, to wit, at the township of Longdon aforesaid, in the said county: And the said W. further says, that the said demise, being so void, and having ceased and determined as aforesaid, in manner and by reason of the premises last aforesaid, he the said W. afterwards, and before the said time when, &c. to wit, on the same day and year last aforesaid, at, &c. tendered and offered to pay to the said E. the said sum of money, so paid by the said E. to the said W. upon the granting of the said demise, so made as last aforesaid, and in consideration of the same, and then and there, requested the said E. to accept and receive the same from him; but the said E. then and there wholly refused so to do: And the said W. further says, that he the said W. after such tender and refusal aforesaid, and before the said time when, &c. to wit, on the same day and year last aforesaid, re-entered into and upon the said place in which, &c. with the appurtenances, and then and there became re-possest thereof, and had held, retained, and enjoyed the same, and hath continually from thenceforth hitherto had, held, retained, re-possest, and enjoyed the same, as he lawfully might for the cause aforesaid; and because the said mare in the said declaration mentioned, after such tender, and refusal, and re-entry by the said W. as aforesaid, into and upon the said place in which, &c. to wit, at the said time when, &c. was wrongfully and injuriously in the said place in which, &c. eating up and depasturing the grass there growing, and doing damage there, he the said William well avows the taking of the said mare in the said place in which, &c. and justly, &c. for and in the name of a distress for the said damages so by the said mare then and there done and doing to the said W. in the said place in which, &c.; and this, &c.; wherefore, &c.

Drawn by MR. CROMPTON.

SOMERSETSHIRE, to wit. James Jarman was attached to answer William Hardwell, &c. for taking three horses in the parish of Thubbear in the said county, in a certain field or place there called Jarman's Verding.

Declaration.

Avowry. Damage feasant.

Plea in bar, that And the said William, as to the said avowry of the said James *locus* **adjoins a** by him above made, says, that by reason of any thing in that close, and divided therefrom by a hedge or fence in which there is a fence and gateway leading from *locus* into the said close; that the tenants of *locus* ought to repair the said gate and gateway, and keep the gate shut; that plaintiff, being possessed of the said close, put his cattle therein, and because the gate was open the cattle escaped. **A 2d Plea, that** *locus* **adjoins the close (as before) plaintiff possessed of close and put in his cattle, and because defendant had wrongfully set open the gate, &c.**

avowry

avowry above alledged by the said James, he the said James ought not to avow the taking of the said cattle in the said field or place called Jarman's Verding, in which, &c. to be just, because he the said William says, that the said field or place called Jarman's Verding now lieth, and at the said time when, &c. did lie, and from time whereof the memory of man is not to the contrary hath lain contiguous and next adjoining on one side thereof to a certain field or place called Hardwell's Verding, situate and being in the said parish of Thubbear, in the county of Somerset, and separated and divided therefrom by a certain hedge or fence, and in which said hedge or fence long before, and at the said time when, &c. there was and still is a certain gate and gateway leading from and out of the said field or place called Hardwell's Verding, into the said field or place called Jarman's Verding, in which, &c. and the said William says, that the said James and all other the tenants and occupiers of the said field or place called Jarman's Verding, in which, &c. for the time being, from time whereof the memory of man is not to the contrary, have repaired and maintained, and have been used and accustomed to repair and maintain, and still of right ought to repair and maintain the said gate or gateway in the said hedge or fence between the said field or place called Jarman's Verding, in which, &c. and the said place or field called Hardwell's Verding, as often as occasion hath required, and to keep the said gate or gateway in the said hedge or fence shut and fastened, to prevent the escape of cattle from and out of the said field or place called Hardwell's Verding, into the said field or place called Jarman's Verding, in which, &c. : And the said William further says, that before and at the said time when, &c. he the said William was possessed of and in the said field or place called Hardwell's Verding, and being so possessed thereof, he the said William, a little before the said time when, &c. put the said cattle in the said declaration mentioned, the same being the proper cattle of him the said William, into the said field or place called Hardwell's Verding to feed and depasture, the grass there then growing and being, as it was lawful for him to do for the cause aforesaid : And the said William further saith, that afterwards, and a little before the said time when, &c. because the said gate in the said hedge or fence between the said field or place called Jarman's Verding, in which, &c. and the said field or place called Hardwell's Verding was open, and not shut and fastened, the said cattle in the said declaration mentioned, at the said time when, &c. strayed and went, without the knowledge and against the will of the said William, from and out of the said field or place called Hardwell's Verding, into the said field or place called Jarman's Verding, in which, &c. and were therefore, and by reason, and on the account aforesaid, until the said James of his own wrong, and before the said William had notice of the said escape, at the said time when, &c. took the said cattle there and unjustly detained them against sureties
and

and pledges, until, &c. in manner and form as the said William hath above complained against him the said James, and this, &c.; wherefore inasmuch as the said James hath above acknowledged the taking of the said cattle in the said declaration mentioned, in the said place in which, &c. the said William prays judgment and his damages, by reason of the taking and unjust detaining thereof, to be adjudged to him, &c.: And the said William, for further plea in this behalf, as to the said avowry of the said James by him above made by leave, &c. says, that by reason of any thing in that avowry above alledged, he the said James ought not to avow the taking of the said cattle in the said field or place called Jarman's Verding, in which, &c. to be just, because he the said William says, that the said field or place called Jarman's Verding, in which, &c. now lieth, and at the said time when, &c. did lie, and from time whereof, &c. hath lain contiguous and next adjoining on one side thereof to a certain other field or place called Hardwell's Verding, situate and being in the said parish of Thubbear in the said county, and separated and divided therefrom by a certain hedge or fence, and in which said hedge and fence long before, and at the said time when, &c. there was and still is a certain gate or gateway leading from and out of the said field or place called Hardwell's Verding, into the said field or place called Jarman's Verding, in which, &c.: And the said William further says, that before and at the said time when, &c. he the said William was possessed of and in the said last-mentioned field or place called Hardwell's Verding, and being so possessed thereof, he the said William, a little before the said time when, &c. put the said cattle in the said declaration mentioned, &c. being the proper cattle of him the said William, into the said field or place called Hardwell's Verding, to feed and depasture, the grass there then growing and being, as it was lawful for him to do, for the cause last aforesaid: And the said William further saith, that because afterwards, and a little before the said time when, &c. the said James had wrongfully, and without the privity or knowledge of the said William, caused the said gate in the said hedge or fence so separating and dividing the said field or place called Jarman's Verding, in which, &c. and the said last-mentioned field or place called Hardwell's Verding, to be set open, and because the said gate was all the said time when, &c. so open, the said cattle in the said declaration mentioned, at the said time when, &c. strayed and went, without the knowledge and against the will of the said William, from and out of the said field or place called Hardwell's Verding, into the said field or place called Jarman's Verding, in which, &c. and were there for and by reason, and on the account last aforesaid, until the said James of his own wrong, and before he the said William had notice of the said last-mentioned escape, at the said time when, &c. took the said cattle there and unjustly detained them against sureties and pledges, until, &c. in manner and

and form as the said William hath above complained against him, and this, &c. ; wherefore, &c.

G. ROOKE.

And the said James, as to the said plea of the said William by him first above pleaded in bar to the said avowry of the said James by him above made, says, that by reason of any thing by the said William in that plea above alledged, he ought not to be barred from avowing the taking of the cattle in the said place in which, &c. to be just, because he says that true it is that the said field or place called Jarman's Verding, in which, &c. lies, and at the said time when, &c. did lie, and from time whereof the memory of man is not to the contrary, hath lain contiguous and next adjoining on one side thereof to the said field or place called Hardwell's Verding, situate and being in the said parish of Thubbear, in the said county of S. and separated and divided therefrom by a certain hedge or fence, and in which said hedge or fence long before and at the said time when, &c. there was and still is a certain gate and gateway leading from and out of the said field or place called Jarman's Verding, in which, &c. as the said William hath in his said plea in bar in that behalf above alledged; but the said James further says, that the said cattle, at the said time when, &c. were wrongfully and injuriously, in the said place called Jarman's Verding, in which, &c. feeding and depasturing on the grass there then growing, and doing damage there in manner and form as the said James hath in his said avowry above alledged; without this, that the said James, and all other the tenants and occupiers of the said field or place called Jarman's Verding, in which, &c. for the time being, from time whereof the memory of man is not to the contrary, have repaired and maintained, and been used and accustomed to repair and maintain, and still of right ought to repair and maintain the said gate or gateway in the said hedge or fence between the said field or place called Jarman's Verding, in which, &c. and the said field or place called Hardwell's Verding, as often as occasion hath required, and to keep the said gate or gateway in the said hedge or fence shut and fastened, to prevent the escape of cattle from and out of the said field or place called Hardwell's Verding into the said field or place called Jarman's Verding, in which, &c. as the said William hath in his aforesaid plea in bar in that behalf alledged, and this, &c. ; wherefore, &c. : And the said James, as to the said plea of the said William by him lastly above pleaded in bar to the aforesaid avowry of the said James by him above made, says, that he, by reason of any thing by the said William in that plea above alledged, ought not to be barred from avowing the taking of the said cattle in the said place in which, &c. to be just, because he says that true it is that the said field or place called Jarman's Verding, in which, &c. lies, and at the said time when, &c. did, and from time whereof the memory of man is not to the contrary, hath lain contiguous and next adjoining on one side thereof to the said field or place called Hardwell's

Replication admits the situation of *locus* and says, that the cattle were wrongfully in *locus*; traverse of the tenants of *locus* being obliged to repair: to 2d Plea, admits, &c. says that the cattle were wrongfully, &c.; traverse of his having opened the gate.

well's Verding, situate and being in the said parish of Thubbear, in the said county of S. and separated and divided therefrom by a certain hedge and fence, and in which said hedge or fence long before and at the said time when, &c. there was and still is a certain gate and gateway leading from and out of the said field or place called Hardwell's Verding, into the said field or place called Jarman's Verding, in which, &c. as the said William hath in his said plea in bar in that behalf above alledged; but the said James further says, that the said cattle, at the said time when, &c. were wrongfully and injuriously in the said place called Jarman's Verding, in which, &c. feeding and depasturing on the grass there then growing, and doing damage there in manner and form as the said James hath in his said avowry above alledged, without this, that the said cattle, at the said time when, &c. strayed and went from and out of the said field or place called Hardwell's Verding, into the said field or place called Jarman's Verding, in which, &c. by reason and on account of the said James having caused the said gate in the said hedge or fence so separating and dividing the said field or place called Hardwell's Verding, and the said field or place called Jarman's Verding, in which, &c. to be set open, as the said William hath in his said last plea in bar above alledged, and this he is ready to verify; wherefore he prays judgment and a return of the said cattle, together with his damages and costs, according to the form of the statute, &c. to be adjudged to him, &c.

S. LAWRENCE.

Rejoinders. Issues on traverses.

This cause was tried at Spring assizes 1789, and verdict for plaintiff, *contra* Buller.

Avowry and cognizance (for taking sheep in a place called A. B.), that the *locus in quo* is pasture, and known by the name of A. B. and is divided into a number of cattle gates, which are demisable by the lord of the manor; that the lord demised five of the gates to one of the defendants, and because the sheep were doing damage he well, &c.

AND the said defendants, by A. B. their attorney, come, &c. (first cognizance as bailiffs of W. Ratcliffe, esquire, acknowledge taking the sheep in *locus* damage feasant, in W. R.'s freehold) and for further avowry and cognizance in this behalf by leave, and the said G. Shaw in his own right well avows, and the said other defendants, as bailiffs of the said G. S. well acknowledge the taking the said sheep in the said place called Shey Hey, in which, &c. and justly, &c. because they say that the said place called S. Hey, in which, &c. now is, and at the said time when, &c. was called and known as well by the name of Hey as by the name of Shey Hey, and contains, and at the said time when, &c. did contain one hundred and fifty acres of pasture, and is, and at the said time when, &c. was, and from time whereof, &c. hath been an antient pasture, divided and allotted into thirty-one cowgates, each cowgate consisting of pasture there for one cow, or two calves in lieu thereof, to be had

or taken yearly from the sixteenth of April to the sixteenth of September, and lying and being within the manor of M. in the said county, and parcel of the same manor, which said cowgates are, and at the said time when, &c. were, and for all the time aforesaid have been customary tenements of the same manor, and demised and demiseable by the lord of the said manor, or by his steward of the court of the said manor for the time being, by the copy of the rolls of the court of the said manor, to any person or persons willing to take the same, in fee simple or otherwise, at the will of the lord, according to the custom of the said manor, and that W. Radcliffe, esquire, being lord of the said manor long before the said time when, &c. to wit, at the court baron of the said W. R. holden in and for the said manor on the third of April 1733, before A. R. then his steward of his court of his said manor, by the copy of the rolls of the court of his said manor, granted to the said G. S. five cowgates, with the appurtenances, parcel of the said cowgates in the said place, in which, &c. to have and to hold to the said G. S. his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor; by virtue of which said grant thereof, he the said G. S. became, and at the said time when, &c. was, and yet is seised of the said five cowgates, with the appurtenances, in the said place in which, &c. as of fee and right at the will of the lord, according to the custom of the said manor; and because the said sheep in the said declaration mentioned, between the sixteenth of April and the sixteenth of September 1749, to wit, at the said time when, &c. were in the said place in which, &c. eating the grass there growing, and doing damage to the said pasture thereof, so that the said G. S. could not have and enjoy the said cowgates there in so ample and beneficial a manner as he ought of right to have had the same, he the said G. S. in his own right well avows, and the said other defendants, as bailiffs of the said G. S. well acknowledge the taking of the said sheep in the said place in which, &c. and justly, &c. as a distress for the said damage so done and doing there, and this, &c.; wherefore, &c.

EDW. BOOTLE.

And the said plaintiff says, that for the reason in the said first cognizance above alledged, they the said defendants ought not, as bailiffs of the said W. R. esquire, to acknowledge the taking the said sheep in the said place in which, &c. called the S. H. in which, &c. to be just, because he says, that true it is that the said place called the S. H. in which, &c. is, and at the said time was called and known as well by the name of, &c. as, &c. and doth contain, and at the said time when, &c. did contain one hundred and fifty acres of pasture, and that the said W. R. esquire, for all the time aforesaid, was and still is seised of and in

Plea in bar, admits that *locus* is parcel of the manor, but says that one C. D. was possessed of the manor of H. and also of a house and premises contiguous to a common, belonging

to the manor of H. only separated therefrom by a small rivulet, which is not sufficient to prevent cattle from escaping from the common into *locus*; that C. D. demised the same to plaintiff, whereby he became entitled to common of pasture, and that plaintiff and his father put their sheep therein, and because *locus* was not separated by a proper hedge from the *locus*, the cattle escaped and strayed.

REPLEVIN.—PLEA IN BAR

the said manor of H. in his demesne as of fee, and that the said place in which, &c. is, and for all the time aforesaid hath been parcel of the said manor, as in the said first cognizance is above alledged; but the said plaintiff says, that long before the said time when, &c. sir A. Hey, baronet, was seised of and in the manor of Harthwaite, in the county aforesaid, with the appurtenances, whereof a certain large waste and common called S. Moor, time out of mind hath been and still is parcel, and also of and in the messuage, land, and premises hereinafter mentioned to be demised and granted with their appurtenances, at the said time of the demise, whereof parcel of the same manor in his demesne as of fee, which said waste and common called S. Moor lays, and at the said time when, &c. lay, and time out of mind hath lain contiguous and next adjoining to the said place called S. H. in which, &c. separated from them only by a small rivulet called C. Dyke, running between them, which said rivulet is not, and at the said time when, &c. was not, and time out of mind hath not been a sufficient fence to prevent geldings, cows, mares, heifers, and sheep from straying and escaping from and out of the said waste and common called S. Moor, into the said place in which, &c. and without any other hedge, fence, inclosure, or division whatsoever separating and dividing the same: And the said sir A. and all those whose estate he had of and in the said manor, with the appurtenances whereof, &c. from time whereof, &c. have had, and have used, and been accustomed to have, for himself and themselves, his and their farmers and tenants of his said manor, and of any lands and tenements, parcel of the manor, and of the messuage, lands, and tenements hereinafter mentioned to be demised and granted respectively with the appurtenances, common of pasture, by reason of neighbourhood in the said place called S. H. in which, &c. and during all the time aforesaid of right have intercommoned, and during all the time aforesaid have of right been used and accustomed to intercommon, and still of right ought to intercommon, by reason of neighbourhood, every year, at all times of the year, in the same place in which, &c. with all their geldings, cows, heifers, and sheep, levant and couchant upon the said manor, and the respective tenements aforesaid, or any of them, and feeding and depasturing in the said waste or common called S. Moor; and the said sir A. being so seised of the said manor, with the appurtenances whereof, &c. and of the said messuage, lands, and tenements, with the appurtenances hereinafter mentioned, he the said sir A. long before the said time when, &c. to wit, on the tenth of March 1709, at M. aforesaid, demised, granted, and to farm let unto the said plaintiff the same messuage, lands, and tenements, with the appurtenances, by the description of one messuage or tenement at S. Hall in S. in the county aforesaid, then being in the possession of the said plaintiff, his assignee or assignees, together with all houses, outhouses, barns, buildings, lands, closes, meadows, commons, and pastures, and all other the appurtenances to the same belonging, to have
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and to hold the same to the said plaintiff and his assignees, from and after the second of February, year last past, for and during the natural lives of him the said plaintiff and of S. his wife, and of Abraham his son, and the survivors and survivor of them, by virtue of which said demise, he the said plaintiff, long before the said time when, &c. entered into the said tenements so demised to him, with the appurtenances, and was and still is seised thereof in his demesne as of freehold: And the said plaintiff further saith, that he the said plaintiff, at the time of the making the said demise to him and before, had held and occupied the said messuage and tenements, with the appurtenances, demised to him as aforesaid, from and under the said sir A. as his farmer and tenant thereof; and that A. Wood, father of the said plaintiff, had for many years before, and until the said plaintiff's holding the same, also held the same from and under the said sir A. as his farmer and tenant thereof; and the said plaintiff and his said father, during all the time of their respective holding the same as aforesaid, in right of the said farm, had, used, and enjoyed common of pasture and feeding for all their geldings, mares, cows, heifers, and sheep levant and couchant upon the said tenements, with the appurtenances, in the said waste or common called S. Moor, to feed on the grass then growing there every year, at all times of the year, as belonging to and occupied by the said tenants; and the said plaintiff being so seised thereof before the said time when, &c. to wit, on the thirteenth of May 1739, put the said sheep in the said declaration mentioned, being his own sheep levant and couchant upon the said tenements, into the said waste or common called S. Moor, to feed on the grass there then growing, and use his common of pasture and feeding there; and because the said place in which, &c. was not separated, &c. &c. which said sheep, so being there for the cause aforesaid, afterwards, to wit, on the same day and year, of their own accord erred and strayed out of said waste or common called S. Moor, into the said place called S. H. in which, &c. and eat up the grass there growing, using his said common of pasture and feeding there by reason of the said neighbourhood, as it was lawful for him to do, from thence until the said defendants afterwards, to wit, on the same day and year, took the said sheep in the said place in which, &c. so depasturing there, for the cause aforesaid, and on the occasion aforesaid, and unjustly detained the same against sureties and pledges, until, &c. as the said plaintiff above complains against them, and this, &c.; wherefore, &c. [A like plea to last avowry.]

R. DRAPER.

And the said defendants, as to the said plea of the said plaintiff above pleaded in bar to the first cognizance of the said defendants, say, that they, by any thing by that plea above alledged, ought not to be barred from having a return of the said sheep adjudged to them, because they say, that the said sheep of the said plaintiff,

Replication to the last plea, that the sheep were in *locus* of plaintiff's own wrong, and traverse of plaintiff's right of common.

at the said time when, &c. were in the aforesaid one hundred and fifty acres of pasture in which, &c. eating the grafs there growing, and doing damage there, of the wrong and injury of the said plaintiff; without this [traverse of prescription for common over *locus per cause de vicinage*] in manner and form as the said plaintiff hath in his said plea in bar in that behalf alledged, and this, &c. wherefore, &c. (A like replication to the other plea.)

EDW. BOOTLE.

In the Common Pleas. Easter Term, 18. Geo. 3.

WESTMORLAND, to wit. Declaration in replevin by Richard Brown against Peter Fordman, for taking three horses in Moor Close.

Avowry for taking cattle; 1st, *non cepit*; 2d, that the *locus in quo* was the property of one A. B. for a long term of years, and that he demised same to the defendant, and because the cattle were doing damage there he seized them.

AVOWRY 1st, *non cepit* 2d: And for a further plea in this behalf he the said Peter, by leave, &c. well avows the taking of the said cattle in the said declaration mentioned, in the said place in which, &c. and justly, &c.; because he says, that the said place in which, &c. long before, and at the said time when, &c. was and still is a certain close, containing by estimation nineteen acres, and called and known as well by the name of Middlesexborough as by the name of Moor Close: And the said Peter further says, that long before the said time when, &c. to wit, on the second day of February 1776, one William Norton, esquire, was lawfully entitled to the said close in which, &c. for the remainder of a certain long term of nine hundred and ninety-nine years, which is yet unexpired; and being so entitled thereto, he the said William, before the said time when, &c. to wit, on, &c. at, &c. aforesaid, demised the said close in which, &c. with the appurtenances, to the said Peter, to have and to hold the same to the said Peter from thenceforth for and during the term of one whole year, and from the end of that year from year to year at the will of the said William and Peter; by virtue of which said demise he the said Peter afterwards, to wit, on the nineteenth day of March 1776 aforesaid, entered into the said close in which, &c. and became, and at the said time when, &c. was and still is thereof possessed, and because the said cattle in the said declaration mentioned at the said time when, &c. were in the said close so as aforesaid demised to the said Peter, eating up the grafs and oats of the said Peter there then lying, growing, and being, and doing damage there; therefore the said Peter well avows the taking of the said cattle there, and as and for a distress for the said damage, and justly, &c.; and this, &c.; wherefore, &c. and a return of the said cattle, together with his damages in this behalf sustained, according to the form of the statute in such made and provided, to be adjudged him, &c.

W. DAVY.

Plea in bar.

Allotment under an inclosing

act, of a close which lay contiguous to plaintiff's close allotted under the same act, and through defect of defendant's fences, the cattle escaped into close of defendant, who was awarded under the act to make same, and keep them in repair.

therein

therein contained, ought not to avow the taking of the said cattle in the said close in which, &c. to be just; because protesting that the said avowry of the said Peter by him in manner and form aforesaid made, and the matter therein contained, are not sufficient in law for the said Peter to avow the taking of the said cattle in the said close in which, &c. to be just; for plea in this behalf the said Richard says, that as well the said close in which, &c. as a certain other close or parcel of land, containing by estimation twenty-eight acres, lying and being in the parish aforesaid, and contiguous and next adjoining to the said close in which, &c. and on the north west side thereof, and not separated or divided therefrom by any sufficient hedge or fence, which before and at the said time when, &c. was and now is in the possession of one William Norton, esquire, and also a certain other close of land lying and being in the parish aforesaid called *Metty Moor Close*, otherwise *Moor Field Close*, from time whereof the memory of man is not to the contrary until the making of the award and allotments hereafter mentioned, were parcel of certain tracts or parcels of common and waste grounds called and known by the respective names of *Temple Sowerby Moor*, *the Down Moor*, *the Whims*, and *Parson's Close*, within the parish aforesaid, and that as well the said close in which, &c. as the said close or parcel of land now in the possession of the said William Norton from the time of the making of the award and allotment hereafter mentioned, have lain, and at the said time when, &c. did lie, and still do lie contiguous and next adjoining to the said close called *Metty Moor Close*, otherwise *Moor Field Close*: And the said Richard further says, that by a certain act of parliament made before the said first time when, &c. *i. e.* at the parliament of our lord the king, at a session thereof holden at Westminster, in the thirteenth year of his reign, intituled, “ An
 “ Act for the dividing and inclosing several Tracts or Parcels of
 “ Common and Waste Ground, called or known by the respec-
 “ tive names of Temple Sowerby Moor, the Down Moor, the
 “ Whims, and Parson's Close, within the parish of Kirby Moor,
 “ in the county of Westmorland;” reciting, that whereas there were several tracts or parcel of common and waste ground, called and known by the respective names of Temple Sowerby Moor, Down Moor, the Whims, and Parson's Close, lying and being in the parish of Kirby, in the county of Westmorland: And whereas William Norton, esquire, in right of Mary his wife, George Atkinson, George Salkeld, Evan Emerson, John Atkinson, and other owners and proprietors of houses and lands in the township or division of Temple Sowerby, in the parish of Kirby aforesaid, were entitled to the right of common or other right in and upon the said common and waste grounds: And that whereas a considerable advantage would arise to the several persons interested in the said common or waste grounds if the same were divided into specific allotments and inclosed, it was enacted by the king's most excellent majesty, by and with the consent and advice of the lords spiritual and temporal, and commons in that present

parliament assembled, and by the authority of the same, that Daniel Robinson, of Dufton, in the said county of Westmorland, esquire, Thomas Heclis, of Appleby Castle, in the said county of Westmorland, and Thomas James, of Penrith, in the county of Cumberland, gentleman, and their successors, to be elected in manner hereinafter mentioned, should be commissioners for dividing and allotting the said common and waste grounds, and putting that act in execution; and it was by the said acts further enacted (amongst other things) by the authority aforesaid, that the commissioners, or any two of them, should, as soon as conveniently might be after the boundaries should have been perambulated and settled as in the said act is mentioned, make, or cause to be made a survey or admeasurement, which should be reduced into writing, and also a map or plan of the said common or waste ground, whereon should be described and expressed the numbers of acres, roods, and perches contained in the said tracts and parcels of common and waste grounds, with all the abutments and boundaries thereof: And it was by the said act further enacted (among other things) by the authority aforesaid, that as soon as conveniently might be after all such claims and objections as should be made in pursuance of that act should be settled and determined, the said commissioners, or any two of them, should set out as certain, and appoint as many places as they should think necessary for stone quarries, gravel pits, clay pits, and watering places upon the said common and waste grounds, for the common use and benefit of all the owners and occupiers of houses or lands within the said township or division of Temple Sowerby aforesaid, for their houses, lands, and cattle therein, but not for any elsewhere, and also proper public highways in and upon, over and through the said common and waste grounds, with the breadth thereof, which should be sixty feet at least between the ditches, and also private ways, bridges, drains, and watercourses in, over, and through the same, for the use of the several proprietors thereof, and order, direct, and appoint such public highways and private ways, bridges, drains, and watercourses to be made and kept in repair by such owners or occupiers of allotments of said common and waste grounds, or persons, or bodies politic or corporate interested in the said division and inclosure, and in such proportions and shares, and in such manner and form, or by such other ways and means as to the said commissioners, or any two of them, should seem proper and convenient; and that from and after the making and finishing of such public highways and private ways so to be set out as aforesaid, it should not be lawful for any person on foot or on horseback, or with any cattle or carriages whatsoever, to use any ways either public or private in, through, or upon the said common or waste grounds, other than such new public highways and private highways as should be set out and appointed as aforesaid; and the said commissioners, or any two of them, should in the next place set out, allot, and assign unto and for the said George Atkinson so much of the said common and waste

waste grounds as would (quantity and quality considered) be equal to fifteen acres thereof, to be estimated or computed at a medium or average value for and in consideration of his bearing and defraying the charges and expences of procuring and obtaining that present act; and they the said commissioners, or any two of them, should apportion, divide, set out, allot, appoint, and assign the residue of the said common and waste grounds unto, for, and amongst the said William Norton, George Atkinson, John Salkeld, Evan Emerson, John Atkinson, and the several other persons and bodies politic and corporate, having right, interest, or property in or upon the same, according to their several and respective rights, interests, or properties therein: And it was by the said act further enacted (amongst other things) by the authority aforesaid, that after the said commissioners should have finished the said division pursuant to the direction of that act, they, or any two of them, should form, and draw up, and cause to be fairly engrossed upon parchment, and then duly execute under their hands and seals an award or instrument in writing, which should express, specify, and ascertain the quantity in statute measure of acres, roods, and perches contained in the said common or waste grounds intended to be divided or inclosed, and also the quantity of every several and respective allotments thereof, and a description of the situation, abuttals, and boundaries of the same, and also such rules, orders, and directions for the hedging, fencing in, and ditching thereof, and for preserving and maintaining such hedges, ditches, and fences, and for laying out, making, and repairing public highways and private ways, bridges, gates, stiles, drains, and watercourses, not only in and over, and through the said common and waste grounds, and the allotments to be made thereof, but also in, over, and through the ancient inclosures within the said township and division of Temple Sowerby aforesaid, and for working the said quarries, and such other rules, orders, and regulations, matters, and determinations, for perfecting the said division and inclosure as to the said commissioners, or any two of them, should seem necessary and proper, to be in the same award inserted, to which said award should be annexed a survey or plan of the said common or waste grounds, signed by the said commissioners, or any two of them, wherein the said several allotments, public highways, and private ways, bridges, ways, gates, stiles, drains, watercourses, and other matters and things therein-before directed, or proper to be directed thereon, should be fairly set off, marked, and expressed; which said award or instrument, and survey or plan, should be lodged and deposited in a chest for the purpose in the chapel of Temple Sowerby, in the said parish of K. so that any person interested therein might have access to, and at their own expence take copies thereof, also the said award or instrument, and a survey or plan, together with the appointments of the new commissioners and arbitrators, and the oaths to be respectively taken by them, and all awards to be made by the said arbitrators should be inrolled in the office of the clerk of the peace of the said county of

Westmorland, to the end recourse might be had to the same by any person whomsoever: And it was by the said act (amongst other things) further enacted, by the authority aforesaid, that from and immediately after the said award or instrument should be enrolled as aforesaid, the several shares and allotments of the said common and waste grounds so to be set out as aforesaid should be in lieu of and in full compensation and satisfaction for all rights of common and other former property, privileges, right, title, interest, claim, and demand whatsoever, which any of the persons, or bodies politic or corporate that should or might be entitled to any such shares or allotments, should or might have had in, over, and upon the said common and waste grounds, or any part thereof, and that all right of common should, from and after that time, cease and be for ever barred, abolished, and extinguished, and that all and every person and persons, body and bodies politic and corporate entitled to any such allotments, should and were thereby required to accept the same within the space of three calendar months next after the enrolling of the said award or instrument, and also should, within one year next after the enrolling thereof at his, her, or their charges respectively, inclose, hedge, ditch, or fence in his or their several allotments, in such manner and form as should be directed and ordered in and by the said award; and in case any person or persons entitled to such allotments, should neglect or refuse to accept, inclose, and fence the same as aforesaid within the several and respective times as before-mentioned, then the said commissioners, or any two of them, should cause such allotment or allotments to be inclosed, hedged, ditched, and fenced, and the expence thereof to be paid in manner in the said act after-mentioned, as by the said act now remaining of record at Westminster aforesaid more fully appears: And the said Richard further says, that the said D. R. T. H. and T. J. the commissioners appointed by the said act, did afterwards, and before the said time when, &c. to wit, on the first day of June 1774, cause to be made and reduced into writing a survey or admeasurement and plan of the said common or waste grounds, and did therein describe and express the number of acres, roods, and perches contained in the said tracts or parcels of common and waste grounds within the abutments and boundaries thereof, and did then and there sign the same in pursuance of and according to the tenor and effect of the said act, to wit, at the parish aforesaid: And the said Richard further says, that the said D. R. T. H. and T. J. did afterwards, and before the said time when, &c. on the eighth day of July, in the year last aforesaid, at the parish aforesaid, form and draw up, and cause to be fairly engrossed upon parchment, and duly executed under their hands and seals a certain award or instrument in writing, and did then and there annex to the same the said plan so signed by them as aforesaid, in pursuance of and according to the tenor and effect of the said act, and which award, or instrument and plan to all other matters and things in and by the said act directed to be enrolled afterwards and before the said time when, &c. to wit, on the
twenty-

twenty-third day of December in the year last aforesaid, at the parish aforesaid, was duly enrolled in the office of the clerk of the peace for the said county of Westmorland, according to the directions of the said act, by which said award or instrument in writing the said D. R. T. H. and T. J. did (amongst other things) award unto the said William Norton and Mary his wife, their heirs, executors, administrators, and assigns, in full satisfaction of all their right of common in and upon the said common and waste grounds, according to his, her, and their respective rights and interests therein, all those parts and parcels of the said common as the same were set out thereon as follows: *i. e.* that part of the said allotments set and assigned for and in respect of the estate at Olerou Bank and Temple Sowerby, then late belonging to Sir William Dalston, then the estate of the said Mary, the wife of the said William Norton, as the same was distinguished in the said plan, and marked with the letter B. and contained fourteen acres two roods and twenty-eight perches, and that part of the said allotment set out and assigned for and in respect of him the said William Norton, late J. F. and A. Y. as the same was distinguished in the said plan marked with the number and letter 2 B. and contained thirty-two acres one rood and thirty-one perches; which said last-mentioned shares or allotments were bounded by the share thereafter set out to Elizabeth Fallowfield, on the south-east by the shares thereafter set out to Joshua Williamson and William Gowling on the north-west, by the turnpike road on the north-east, by the road leading over the said common to Bolton on the south-west, and did also thereby award unto Elizabeth Fallowfield, spinster, her heirs, executors, administrators, and assigns, in lieu and full satisfaction of her right and interest in and upon all the said common or waste grounds, all those parts or parcels of the said common as the same were set out thereon and distinguished in the said plan marked with the letter C. containing together forty-one acres two roods and thirty-one perches, one part whereof was bounded by the share of the said William Norton and Mary his wife on the north-west, by Kirby Moor on the south-east, by the turnpike road on the north-east, and by the said road to Bolton on the south-west, another part whereof was bounded by the old inclosed lands on the north-east, by the turnpike road on the south-west, and by the pond near Spital Corner on the north-west; another part was bounded by the said turnpike road on the north-east, on the old inclosed lands on the south-west, by an occupation road on the south-east, and by the waste grounds near the ground of Temple Sowerby aforesaid on the north-west; and the said D. R. T. H. and T. J. did, by the said award or instrument in writing, award and order that the several persons who had shares set out and allotted to them upon the said common and waste grounds in most parts and places as were thereafter set out to them, and that the several persons who had shares or allotments set out to them on the said common and waste grounds, their heirs, executors, administrators, successors, and assigns,

assigns respectively at all times thereafter, did and should maintain, uphold, support, and keep the same in good and sufficient repair, *i. e.* the said E. Fallowfield to make the fence between her share and Kirby Moor, and ninety-five yards belonging at the south-west, and between her share and the share of William Norton in right of his wife, and the said William Norton, esquire, in right of his wife, to make the remainders of the fence between his share and the share of the said Elizabeth Fallowfield; and the said D. Robinson, Thomas H. and Thomas James did, by the said award or instrument in writing, award and order that the several persons who had shares set out should accept the same within three calendar months next after the execution of that their award, and should make and complete such fences within one year from the date thereof, and that all right of common should, immediately after the execution of that their award, cease and be for ever hereafter barred and extinguished, as by the said award or instrument in writing duly executed and inrolled as aforesaid, more fully appears; of which said act of parliament, and award or instrument in writing, the said William Norton afterwards, and before the said time when, &c. and within three calendar months next after the execution of the said award, had notice, and then and there duly accepted the said allotment so awarded unto him, and the said Mary his wife, or to either of them as aforesaid; by virtue whereof the said William Norton, and all other the tenants and occupiers of the said allotment, from thenceforth hitherto have been, and at the said time when, &c. were and still are liable to make and repair sufficient hedges and fences between so much of the said allotment so allotted to him the said William Norton and Mary his wife as aforesaid, as adjoins upon the said allotment so allotted to the said Elizabeth Fallowfield as aforesaid, as is by the said award ordered and directed to be made by the said William Norton in right of his said wife: And the said Richard further says, that the said allotment so allotted to the said William Norton as aforesaid, and the said close in which, &c. and the said other closes thereto adjoining, now in the possession of the said William Norton, now are, and at the said time when, &c. were one and the same close or parcel of land, and not other and different, to wit, at the parish aforesaid, and that the said allotment so allotted to the said Elizabeth Fallowfield as aforesaid; and the said close called Metty Moor Close, otherwise Moorfield Close, now are, and at the said time when, &c. were one and the same close or parcel of land, and not other or different, and that the hedge and fence hereinafter mentioned to be out of repair, and the hedge and fence in the said award mentioned and directed to be made by the said William Norton in right of his said wife, between the said allotment of him the said William Norton and the said allotment of the said Elizabeth Fallowfield now are, and at the said time when, &c. were the same hedges and fences, and not other or different, to wit, at the parish aforesaid: And the said Richard further says, that he the said Richard before and at the said time when, &c. was law-
fully

fully possessed of and in the said close called Metty Moor Close, otherwise Moorfield Close, lying contiguous and next adjoining to the said close now in the possession of the said William Norton, so lying contiguous and adjoining to the said close in which, &c.: And the said Richard further saith, that he the said Richard, being so possessed of the said close called Metty Moor Close, otherwise Moorfield Close, the said cattle of the said Richard, a little before the said time when, &c. were in the said close called Metty Moor Close, otherwise Moorfield Close; and because the hedge and fence between the said close called Metty Moor Close, otherwise Moorfield Close, and the said close now in the possession of the said William Norton before and at the said time when, &c. were not sufficiently repaired, and were out of repair; and because before and at the said time when, &c. there was not any sufficient hedge or fence between the said close now in the possession of the said William Norton, and the said close in which, &c. so as to prevent cattle from time to time being in the said close called Metty Moor Close, otherwise Moorfield Close, from straying and leaping thereout into the said close or parcel of land, now in the possession of the said William Norton from thence into the said close in which, &c. and doing damage there to the said cattle of the said Richard so being in the said close called Metty Moor Close, otherwise Moorfield Close as aforesaid, a little before the said time when, &c. strayed and escaped from thence into the said close or parcel of land now in the possession of the said William Norton, and from thence into the said close in which, &c. through default and for want of such hedges and fences as aforesaid, and on that occasion were in the said close in which, &c. eating up the grass of the said Peter there then lying, growing, and being, and doing damage there until the said Peter, of his own wrong, at the said time when, &c. took the said cattle in the said declaration mentioned in the said close in which, &c. and them unjustly detained against sureties and pledges until, &c. as the said Richard hath above thereof complained against him; and this he is ready to verify; wherefore inasmuch as the said plaintiff hath above thereof acknowledged the taking of the said cattle in the said close in which, &c. he the said Richard prays judgment and his damages, by occasion of the taking and unjustly detaining of the said cattle, to be adjudged to him.

AVOWRIES AND COGNIZANCES (WITH PLEAS, &c.
IN BAR TO.)

By COMMONERS. DAMAGE FEASANT.

<p>ASHMAN against GREENHILL AND ANOTHER.</p>	}	<p>SOMERSETSHIRE, to wit. Declaration in Declaration in replevin by Robert Ashman against Benjamin Green- hill and William Moor, for taking one mare and one gelding in Kilmerdon Common, &c.</p>	<p>Declaration in replevin for taking a mare.</p>
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And

Avowry and
eognizance, a-
vowing taking
cattle damage
feasant in locus in
quo, parcel of a
common in the
manor of A.
over which a-
vowant claims a
common of pas-
ture in right of
a copyhold mes-
suage and land
granted by the
lord to the a-
vowant and two
others for their
lives and the life
of survivor, for
all commonable
cattle levant and
couchant on said
messuage and
land.

And the said Benjamin and William, by their attorney, come and defend the wrong and injury, when, &c.; and the said William in his own right, and the said Benjamin as his bailiff, well acknowledges the taking of the said cattle in the said place in which, &c. and justly, &c.; because they say, that long before the said time when, &c. to wit, on the eighteenth of October 1739, one Thomas Caum, esquire, and Thomas Fane, esquire, were seised in their demesne as of fee of and in the manor of Kilmerston, in the said county, of which said manor the said place called Kilmerston, in which, &c. in the said declaration mentioned, now is, and at the said time when, &c. was, and from time whereof, &c. hath been part and parcel, within which said manor whereof, &c. there now are, and at the said time, when, &c. were, and from time whereof, &c. there hath been divers customary tenements, part and parcel of the said manor, and demised and demiseable by copy of the court rolls of the said manor, by the lord or lords of the said manor for the time being, or his or their stewards of the court of the said manor for the time being, to any person or persons willing to take the same for the term of three lives or otherwise, at the will of the lord or lords of the said manor, according to the custom of the said manor: And the said defendants further say, that within the said manor whereof, &c. there now is, and at the said time when, &c. there was, and from time whereof, &c. hath been a certain ancient and laudable custom there used and approved of within the said manor; that is to say, that all and every the customary tenants of the said customary tenements, with the appurtenances for the time being respectively, have had, and have used, and been accustomed to have and use, and of right ought to have had and used, and still of right ought to have and use for himself and themselves, his and their farmers and tenants, occupiers of the said customary tenements respectively, with the appurtenances, common of pasture in, upon, and throughout the said place in which, &c. called K. Common in the said declaration mentioned, for all his, her, or their commonable cattle, levant and couchant in and upon the said customary tenements, with the appurtenances, in each and every year at all times of the year, at his, her, or their free will or pleasure, as belonging and applying to the said customary tenements, with the appurtenances, parcel, &c.: And the said Benjamin and the said William further say, that the said William Carn and Thomas Fane being so seised in their demesne as of fee of and in the said manor of K. with the appurtenances as aforesaid, they the said William Carn and Thomas Fane long before the said time when, &c. to wit, at a court baron and customary court of the said William Carn and Thomas Fane, heretofore holden in and for the said manor on the said eighteenth of October 1739, by and before Thomas Evans, then their steward of the court of the said manor, by the copy of the rolls of the court of the said manor granted to the said William, one Mary Moor and Palmer Dovy, a certain messuage and seventy-seven acres of land, with the appurtenances, the same being one of the said customary tenements, to have and to hold the same, with the appurte-

appurtenances, unto the said William, Mary Moor, and P. Dovy, for the term of their lives, and the life of the longest liver of them successively, according to the custom of the manor aforesaid, after the determination of the estate and interest which one Anne Moor, widow, then had of and in the said messuage and seventy-seven acres of land, with the appurtenances, for and during her widowhood only, at the will of the lord, according to the custom of the said manor ; by virtue of which said grant the said William, Mary Moor, and Palmer Dovy afterwards and long before the said time when, &c. became and were seised of the reversion of and in the said messuage and seventy-seven acres of land, with the appurtenances expectant upon the determination of the said estate and interest of the said Ann Moor in the said messuage and seventy-seven acres of land for her widowhood only, at the will of the lord, according to the custom of the said manor : And the said Benjamin and William further say, that the said Anne Moor being so seised of and in the said messuage and seventy-seven acres of land, with the appurtenances as aforesaid, and the said Anne Moor being and continuing a widow, and the said William, Mary Moor, and Palmer Dovy being so seised of the reversion as aforesaid, she the said Mary Moor afterwards, and in the lifetime of the said Ann Moor, and long before the said time when, &c. to wit, on the twenty-first of September 1756, at K. aforesaid, in the said county, died, and the said William and Palmer Dovy survived her the said Mary, and thereupon the said William and P. Dovy became and were seised of the reversion of and in the said messuage and seventy-seven acres of land, with the appurtenances expectant upon the determination of the said estate and interest of the said Anne Moor in the said messuage and seventy-seven acres of land, with the appurtenances as aforesaid, by survivorship ; and the said Anne Moor being so seised of and in the said messuage and seventy-seven acres of land, with the appurtenances as aforesaid, and the said Anne being and continuing a widow, and the said William and P. D. being so seised of the reversion as aforesaid by survivorship as aforesaid, she the said Anne Moor afterwards, and long before the said time when, &c. to wit, on the fourth of January 1764, at K. aforesaid, in the said county, died, and the said William and P. D. survived her, after whose decease they the said William and P. D. entered into and upon the said messuages and seventy-seven acres of land, with the appurtenances, and became and were seised in their demesne as of freehold for and during the natural lives of them the said William and P. D. at the will of the lord, according to the custom of the said manor ; and the said William and P. D. so being seised thereof as aforesaid, he the said P. D. afterwards, and long before the said time when, &c. to wit, on the nineteenth of February 1778, at K. aforesaid, died, after whose death the said William afterwards, and long before the said time when, &c. to wit, on the same day and year last aforesaid, became and was, and still is seised of and in the said messuage and seventy-seven acres of land, with the appurtenances in his demesne as of freehold, for and during the natural life of him the said

William

William by survivorship, having survived the said Mary Moor and P. D. both deceased as aforesaid, at the will of the lord, according to the custom of the said manor; and the said William being so seised of the said messuage and seventy-seven acres of land, with the appurtenances as aforesaid, because the said cattle in the said declaration mentioned, at the said time when, &c. were wrongfully in the said place called K. C. in which, &c. eating and depasturing upon the grass there then growing, and doing damage there, so that the said William could not have and enjoy the said common of pasture in the said place in which, &c. parcel, &c. in as ample and beneficial a manner as he the said William was entitled unto, and then and there of right ought to have had and enjoyed the same, he the said W. in his own right well avows, and the said Benjamin, as his bailiff, well acknowledges the taking of the said cattle in the said declaration mentioned, at the said time when, &c. in the said place called K. C. in which, &c. and justly, &c. for and in the name of a distress for the said damage so there done and doing; and this, &c.; wherefore, &c.

S. LAWRENCE.

Plea in bar, *de injuria* and traverse of common of pasture; 2d, leave and licence from the bailiff; 3d, *de injuria*, and traverses the grant from the lord; 4th, leave and licence of one W. A. who claims an unlimited common of pasture in *locus* in right of a copyhold tenement demised to him by the lord.

(Plea to the avowry and cognizance, &c. *de injuria sua*, and traverse of the custom for common of pasture, &c. : (And for further plea in bar by leave, &c.; because he says, that the said Robert, a little before the said time when, &c. by the licence and consent of the said Benjamin first in that behalf by the said Benjamin given and granted to the said Robert at K. aforesaid, put the said cattle in the said declaration mentioned, in the said place in which, &c. to feed and depasture on the grass there then growing; which said cattle, at the said time when, &c. were in the said place in which, &c. on the occasion aforesaid depasturing the grass there growing until the said William and Benjamin at the said time when, &c. took the said cattle in the said declaration mentioned, and unjustly detained the same against sureties and pledges until, &c. as the said Robert hath above complained against them; and this, &c.; wherefore, &c. : And for further plea, by leave, &c.; because he says, *de injuria*, &c.; without this, that the said William Caum and Thomas Fane granted to the said William, Mary Moor, and P. Dovy, the said messuage and seventy-seven acres of land, with the appurtenances, in manner and form as the said William and Benjamin have above in their said avowry and cognizance alledged; and this, &c.; wherefore, &c. : And for further plea, &c. by leave, &c.; because he says, that long before the said time when, &c. to wit, on the twenty-first of October 1765, one Robert Twyford, clerk, was seised in his demesne as of fee of and in the said manor of K. in the said county, of which said manor the said place called K. C. in which, &c. in the said declaration mentioned, now is, and at the said time when, &c. was, and from time immemorial hath been part and parcel, within which said manor whereof, &c. there now are, and at the said time when, &c. were, and from time whereof, &c. there now have been di-

vers

vers customary tenements, part and parcel of the said manor, and demised and demiseable by copy of the court rolls of the said manor, by the lord or lords of the said manor for the time being, or by his or their steward of the said court of the said manor for the time being to any person or persons willing to take the same for the term of three lives or otherwise, at the will of the lord, according to the custom of the said manor: And the said Robert further says, that within the said manor whereof, &c. there now is, and at the said time when, &c. and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of within the said manor, *i. e.* that all and every the customary tenements of the said last-mentioned customary tenements, with the appurtenances, for the time being respectively, have had and have used, and been accustomed to have and use for himself and themselves, his and their farmers and tenants, occupiers of the said last-mentioned customary tenements respectively, with the appurtenances, common of pasture in, upon, and throughout the said place called K. C. in the said declaration mentioned, for all manner of commonable cattle in each and every year, at all times of the year, at his and their free will and pleasure, as belonging and applying to the said last-mentioned customary tenants, with the appurtenances, parcel, &c. [Grant from Twyford of premises to one William Ashman.] [Entry of William Ashman]: and the said William Ashman being so seised of the said last-mentioned ten acres of pasture, tenement, or dwelling-house, with the appurtenances as last aforesaid, he the said Robert, a little before the said time when, &c. by order and permission of the said William Ashman, put the said cattle in the said declaration mentioned in the said place in which, &c. to feed and depasture on the grass there then growing; which said cattle, at the said time when, &c. were in the said place in which, &c. on the occasion aforesaid, depasturing the grass there then growing until, &c.; and this, &c.; wherefore, &c.

V. GIBBS.

Replication to first plea; issue on traverse; general demurrer to second plea; replication to third plea; issue on traverse; general demurrer to fourth plea.

S. LAWRENCE.

Replication, issue on the first and third pleas; demurrer to the second and fourth.

I Think the second plea bad, inasmuch as plaintiff states he puts his cattle in by licence of defendant Greenhill, whereas a bailiff cannot licence a stranger to put cattle on his master's own land without his express order, much less licence a stranger to put his cattle on the common to the injury of the other commoners. I think the fourth plea objectionable throughout: the plaintiff there states a custom for copyholders to common, and derives a copyhold estate to his brother. He states the custom to be, to have common for all commonable cattle on the common, and does not ascertain the extent or measure of the common by say-

ing levant and couchant; and I take it the custom can never extend to all commonable cattle of copyholders without stint. He also states, that he put his cattle in by the order and permission of his brother William Ashman, and a copyholder cannot licence a stranger to common. I have, therefore, for the above reasons demurred to the second and last pleas, and taken issues on the other.

G. CROMPTON.

After this plaintiff amended his second plea, and struck out his last, but the cause then was compromised by plaintiff's paying defendants their full costs, &c.

MIDDLESEX,

Declaration in **MIDDLESEX**, to wit. Thomas Chandler, William Chaf-
 replevin for tak- ley, and Henry Woodman, were summoned to answer Matthew
 ing sheep. Stone, of a plea wherefore they took the cattle of the said Matthew
 and unjustly detained them against sureties, &c. and whereupon
 the said Matthew, by George Clarke, his attorney, complains ;
 for that the said defendants, upon the first of April 1786, at the
 parish of Hayes, otherwise Heese, in the said county of Middle-
 sex, in a certain place there called Betwell Common, otherwise
 Betwell Green, otherwise Betwell Heath, took the cattle, that is
 to say, eighty-two sheep of the said Matthew, of the price of one
 hundred pounds, and unjustly detained them against sureties and
 pledges until, &c. ; wherefore the said Matthew says he is injured,
 and hath sustained damage to the value of twenty pounds; and
 therefore, &c.

Avowry and And the said defendants, by John Cooke, their attorney, come
 cognizance, *locus* and defend the wrong and injury, when, &c. and the said Tho-
 in *quo* a waste mas in his own right well avows, and the said William and Henry,
 within the ma- as bailiffs of the said Thomas, well acknowledge the taking of
 nor of H. ; a the said cattle in the said declaration mentioned, in the said place
 messuage and in which, &c. and justly, &c. ; because they say, that the said
 land, parcel of place in which, &c. now is, and from time immemorial hath been,
 the manor, de- a certain waste or common, lying and being within, and parcel
 miseable ; a of the manor of Heese, otherwise Hayes, in the parish aforesaid,
 grant of the in the county aforesaid : And the said defendants further say, that
 messuage and a certain messuage, and divers, to wit, fifty acres of land, with
 land from the the appurtenances, lying and being at Betwell, in the parish
 lord of the ma- aforesaid, in the county aforesaid, now are, and from time where-
 nor to E. B. of the memory of man is not to the contrary have been, a custom-
 who entered ary tenement, lying and being within, and parcel of the manor of
 and is seised ; Heese, otherwise Hayes, demised and demiseable by the lord of the
 E. B. demised manor, or his steward of the courts of the said manor for the time
 by indenture, being, by copy of the court roll of the said manor, to any person
 and with the or persons willing to take the same in fee simple, or otherwise, at
 consent of the the will of the lord, according to the custom of the said manor :
 lord, to one of And the said defendants further say, that long before the said time
 the defendants when, &c. to wit, on the thirteenth of January 1777, at a
 for 21 years ; a court of George John Coomes, esquire, then being lord of the
 custom forevery said manor, holden at the parish aforesaid, in the county aforesaid,
 tenant of the within and for the said manor of Heese, otherwise Hayes, before
 said messuage James Garth, gentleman, then steward of the court of the said
 and land upon manor, he the said G. J. Cook then being lord of the said manor,
 paying a heath- did, by copy of the court-rolls of the said manor, grant to one
 rent of sixpence Elisha Biscoe, esquire, then aforesaid customary tenement, with
 to have common the appurtenances, to hold the same to the said E. Biscoe and his
 of pasture over heirs, at the will of the lord, according to the custom of the said
locus for twenty manor, by virtue whereof the said E. B. aforesaid, and before
 sheep, or two the said time when, &c. to wit, on the same day and year afore-
 horses, or two said, at the parish aforesaid, entered into the said customary tene-
 cows, and pay- ment,
 ing heath-rent of three-pence
 for ten sheep, and because plaintiff's sheep were damage feasant there, *per quod* he could not enjoy, &c. well avows,
 one horse or one &c.
 cow ; that de-
 fendant paid a
 rent of sixpence,
 and because plaintiff's sheep were damage feasant there, *per quod* he could not enjoy, &c. well avows,
 &c.

ment,

ment, with the appurtenances, and became, and was, and from thence hitherto hath been, and still is, seised thereof in his demesne as of fee, at the will of the lord, according to the custom of the said manor; and the said E. B. being so seised of the said customary tenements, with the appurtenances, as aforesaid, he the said E. B. afterwards, and before the said time when, &c. to wit, on the twenty-eighth of June 1730, at the Parish aforesaid, by a certain indenture then there made between the said E. B. and the said Thomas Cone, part of which said indenture, sealed with the seal of the said E. B. the said defendants now bring here into court, the date whereof is the same day and year aforesaid, he the said E. B. by and with the consent of Francis Aschough, esquire, then being lord of the said manor, demised the said customary tenements, with the appurtenances, to the said Thomas, to hold the same to the said Thomas from Michaelmas then last past, for the space of twenty-one years thence next ensuing, by virtue of which said demise the said Thomas afterwards, and before the said time when, &c. to wit, on the twenty-third of June 1780, at the parish aforesaid, entered into the aforesaid customary tenement, with the appurtenances, and became, and was, and at the said time when, &c. continued thereof possessed + : And the said defendants further say, that there now is, and at the said time when, &c. there was, and from time immemorial there hath been, a certain ancient and laudable custom used and approved of within the said manor, that is to say, that every tenant and holder of the aforesaid customary tenement, with the appurtenances, paying heath rent, in manner hereafter mentioned, have, had, and have been used, and accustomed to have, and of right ought to have had, and still of right ought to have common of pasture in and upon the said place in which, &c. in manner following, that is to say, every tenant and landholder, paying a heath rent of sixpence *per annum* to the lord of the said manor, hat'a had common of pasture thereon for twenty sheep, or two horses, or two cows, in lieu thereof, and every such tenant, paying a heath rent of threepence *per annum* to the lord of the said manor, hath had common of pasture thereon for ten sheep, or one horse, or one cow, in lieu thereof, as to the said customary tenement, with the appurtenances, belonging and appertaining: And the said defendants in fact say, that the said Thomas being so possessed of the aforesaid customary tenement, with the appurtenances, and such landholders as aforesaid, he the said Tho. before, and at the said time when, &c. was a heath renter aforesaid and paid a heath rent of sixpence *per annum* to the said Francis Aschough, then and there being lord of the said manor, for and in respect of the aforesaid customary tenement, with the appurtenances; and because the said cattle in the said declaration mentioned at the said time when, &c. were in the said place in which, &c. depasturing on the grass there then growing, and doing damage there to the said Thomas, so that he the said Thomas could not have and enjoy the aforesaid common of pasture there in so large and ample a manner as he then and there ought to have enjoyed

ad Avowry, a custom within the manor for the homage of the court baron to make bye laws for regulating the common; that homage make a bye law, regulating the common, as stated in first avowry, and because, &c.

enjoyed the same, he the said Thomas in his own right well avows, and the said William and Henry, as his bailiffs, well acknowledge the taking the cattle in the said place in which, &c. and justly, &c. as and for a distress for the said damage so by them there done, and doing, &c.: And for a further avowry in this behalf, &c. [same as first avowry to +]: And the said defendants further say, that there now is, and at the said time when, &c. was, and from time immemorial there hath been, a certain ancient and laudable custom used and approved of within the said manor, that is to say, that the homage of the court baron of the said manor, for the time being, charged and sworn at the said court baron, from time whereof the memory of man is not to the contrary, have made, and have used, and been accustomed to make, and of right ought to have made, and still of right ought to make bye-laws, or orders, for the government and regulation of the commonable places within the said manor, and for the preservation of the herbage thereof; and the said defendants further say, that at the court baron of Roger Jenyns, esquire, then lord of the said manor, holden at Heese, otherwise Hayes aforesaid, within and for the said manor, on the twenty-sixth of April 1693, before Samuel Corbett, gentleman, then steward of the same court, Richard Rice, Thomas Elphie, Matthew Ruffel, Richard Holes, John Turner, Matthew Colbume, John Ply, Thomas Talbot, and Henry Turner, then tenants of the said manor, and then and there being sworn on the homage in the same court, did then and there order that every landholder or tenant, who paid sixpence *per annum* for heath rent, should have liberty to keep and depasture upon all or any of the common heaths and common fields and places thereunto adjoining and belonging, twenty sheep, and no more, and that every such landholder and tenant, who paid three-pence for heath rent, should in like manner keep ten sheep, and no more; and that every such landholder or tenant, having or keeping no sheep, should have leave to keep and depasture upon the said lands and premises, two horses or two cows instead of the said number of twenty sheep, or one horse or one cow instead of ten sheep, in like manner: And the said defendants in fact say, that the said Thomas being so possessed of the said last-mentioned customary tenement, with the appurtenances, he the said Thomas before, and at the said time when, &c. was a heath renter, and paid a heath rent of sixpence *per annum* to the said F. Aschough, esquire, then and there being lord of the said manor, for and in respect of his said last-mentioned customary tenement, with the appurtenances; and because the said cattle in the said declaration mentioned, at the said time when, &c. were in the said place in which, &c. depasturing on the grass there then growing, and doing damage, so that he the said Thomas could not have, use, or enjoy his said last-mentioned common of pasture there in so large and ample a manner as he then and there ought to have used and enjoyed the same, he the said Thomas in his own right well avows, and the said W. and H. as his bailiffs, acknowledge the taking of

of the said cattle in the said place in which, &c. and justly, &c. as and for a distress for the said damages so there done and doing, &c.

W. MANLEY.

And the said Matthew says, that by reason of any thing alledged in the said several avowries and cognizances above made, or either of them, neither the said Thomas ought to avow, nor the said W. and H. to acknowledge the taking of the said sheep in the said place in which, &c. to be just; because he says, that true it is that the said place in which, &c. now is, and at the said time when, &c. was, and from time whereof the memory of man is not to the contrary hath been parcel of the manor of Heese, otherwise Hayes, in the parish aforesaid, in the county aforesaid, as the said defendants have above alledged; but that the said Matthew further says, that one William Burton Raynes, long before the said time when, &c. was, and yet is, seised in his demesne as of fee of and in divers, to wit, forty acres of arable land, with the appurtenances, situate, lying, and being in the parish aforesaid, in the said county, near unto the said place in which, &c. and the said W. B. R. and all those whose estates he so had, and now hath of and in the said land, with the appurtenances, from time whereof, &c. have had and have used, and been accustomed to have, and of right ought to have had, and still of right ought to have, for himself and themselves, his and their tenants and farmers of the said land, with the appurtenances, for the time being, common of pasture in the said place in which, &c. for all his and their commonable sheep levant and couchant in and upon the said land, with the appurtenances, every year and at all times of the year, at his and their free will and pleasure, as to the said land with the appurtenances, belonging and appertaining; and being so seised thereof, he the said W. B. R. before the said time when, &c. to wit, on the twenty-fifth of March 1785, at, &c. demised the said land, with the appurtenances, to the said Matthew, to have and to hold the same to him the said Matthew for the term of one whole year from thence next ensuing, and fully to be complete and ended, and so from year to year, for so long time as it should please the said W. B. R. and the said Matthew; by virtue of which said demise the said Matthew afterwards, and before the said time when, &c. to wit, on, &c. entered into the said demised premises, with the appurtenances, and became, and at the said time when, &c. was, and still is, possessed thereof; and the said Matthew being so possessed thereof, long before the said time when, &c. to wit, on the said first of April 1786, put the said sheep in the said declaration mentioned, being his own commonable sheep levant and couchant, in and upon the said land, with the appurtenances, so demised as aforesaid, into and upon the said place in which, &c. to depasture the grass there then growing, and to use his said common of pasture there as it was lawful for him to do, and the said sheep were in the said place in which, &c. depasturing

Plea in bar admits *locus* to be, &c. but says, that one W. R. seised of forty-six acres of land in the same parish near to *locus*; prescription for common of pasture over *locus* for sheep; a demise from W. R. to plaintiff, by which plaintiff put in his sheep, until defendant *de injuria sua*, &c.

ing upon the grass there then growing, using the said common of pasture there until the said defendants of their own wrong, at the said time when, &c. took the said sheep of him the said Matthew, and unjustly detained the same against sureties and pledges until and in manner and form as the said Matthew hath above complained against them; and this, &c.; wherefore, &c.: [2d Plea in bar same as first, except claiming common of pasture for three dry sheep for every two acres, and one lamb for every one acre of the said land, instead of for commonable sheep. 3d Plea in bar same as first, claiming under Amey Ann Casy and Mary Casy in right of twenty-eight acres of land. 4th Plea in bar same as second, claiming under Amey Ann Casy and Mary Casy, in right of the said twenty-eight acres of land. 5th and 6th Pleas same as first and second, claiming under Michael Granger in right of twenty two acres of land.]

W. BALDWIN.

Replication,
supporting a-
vowry and tra-
verse of plain-
tiff's right of
common.

And the said defendants, as to the said plea of the said Matthew by him first above pleaded in bar to the said several avowries and cognizances above made, as before, say, that the said sheep in the said declaration mentioned at the said time when, &c. were wrongfully in the said place in which, &c. eating up and depasturing the grass there growing, and doing damage, as they have in the said avowries and cognizances above alledged, without this, &c. [traverse of right to common of pasture]; and this, &c.; wherefore, &c. [Replikations traverse the rights to common of pasture in all the pleas.]

W. MANLEY.

Rejoinder.

Rejoinder, issues on all the traverses.

This cause was tried at the sittings after Trinity term 1788, before lord Kenyon, chief justice, and verdict for defendants.

Declaration for
taking cattle.

ROGERS } SHROPSHIRE; to wit. John Gibbons was sum-
against } moned to answer Edward Rogers, &c. for taking one
GIBBONS. } yearling heifer, at the parish of St. Martins, in the
county of Salop, in a certain place there called Coe Croch.

Avowry, damage feasant.

Plea in bar, that
locus in quo lies
contiguous to a

And the said Edward, as to the said avowry of the said John, by him above made, says, that the said J. by reason of any thing common; that tenants of the *locus in quo* ought to repair the fence between the *locus* and common; that lord Duncannon was seised of a messuage; prescription for common of pasture over *locus* for all cattle at all times of the year; demise of the messuage, &c. to plaintiff; that plaintiff put his cattle on the common, and because fence out of repair cattle escaped, &c.

therein

therein alledged, ought not to avow the taking of the said cattle in the said place in which, &c. to be just; because he says, that the said place in which, &c. now is, and from time whereof the memory of man is not to the contrary, hath lain contiguous and next adjoining to a certain common or waste, situate, lying, and being in the said parish of St. Martins, in the said county of Salop, called Glynn Morlas, otherwise Glynn Morlas Common, and that the said J. and all others the tenants and occupiers of the said close, in which, &c. for the time being, from time whereof, &c. hitherto of right ought to have maintained and repaired, and until the neglect hereinafter mentioned, have been used and accustomed to maintain and repair, and the said J. still of right ought to maintain and repair the fence between the said close in which, &c. and the said common or waste called Glynn Morlas, otherwise Glynn Morlas Common, when and as often as occasion hath required, and should require, to prevent the escape of cattle out of the said common or waste, called, &c. into the said close in which, &c. : And the said E. further says, that Arthur Hill Trevor, esquire, commonly called lord Viscount Duncannon of the kingdom of Ireland, long before the said time when, &c. and at the time of making the demise hereinafter mentioned, was, and still is seised of and in a certain messuage and divers lands and tenements, with the appurtenances, situate and being in the parish of St. Martins, in the said county of Salop, called the Rhyan, in his demesne as of fee, and that the said Lord Viscount Duncannon, and all others whose estate he so had and hath of and in the said messuage, lands, and tenements, with appurtenances, from time whereof, &c. have had and have used, and been accustomed to have, and of right ought to have, and the said lord viscount Duncannon still of right ought to have, for himself and themselves, his and their tenants and farmers, occupiers of the said messuages, lands, and tenements, with the appurtenances, for the time being, common of pasture in and over the said common or waste, called, &c. in the parish, &c. for all his and their commonable cattle levant and couchant, in and upon the said messuage, lands, and tenements, with the appurtenances, every year at all times of the year, at his or their free will and pleasure, as belonging and appertaining to the said messuages, lands, and tenements, with the appurtenances; and being so seised thereof, he the said Arthur Hill Trevor, lord viscount Duncannon, long before the said time when, &c. to wit, on the first of May 1783, at the parish, &c. demised the said messuages, lands, and tenements, with the appurtenances, to the said E. to have and to hold the same unto the said E. from thenceforth for and during, and unto the full end and term of one year from thence next ensuing, and fully to be complete and ended, and so from year to year for so long as the said lord viscount Duncannon and E. should please; by virtue of which said demise he the said E. afterwards, and before the said time when, &c. to wit, on the first of May 1784, entered into the said demised premises, with the appurtenances, and became and at the said time, when, &c. was and still is, possessed thereof; and

ad Plea in bar, that *locus* adjoins a close, called G. M.; that tenants of *locus* ought to repair, &c.; lord D. seised of the close, and gave leave to plaintiff to put in his cattle, and because, &c.

being so possessed thereof, he the said E. afterwards, and before the said time when, &c. that is to say, on the twenty-first of July 1784, put his said cattle in the said declaration mentioned, then being his own commonable cattle and levant and couchant, in and upon the said messuage, lands, and premises, with the appurtenances, so demised to him as aforesaid, into the said common or waste, called, &c. to depasture the grass there then growing, and to use his said common of pasture there, as it was lawful for him to do for the cause aforesaid, and the said cattle remained there for the cause aforesaid, until the escape thereof hereinafter mentioned, and because the said fence between the said common or waste, called, &c. and the said close of the said J. called, &c. in which, &c. was ruinous, broken down, insufficient, and in decay, for want of necessary repairing and amending thereof the said cattle of the said E. in the said declaration mentioned, a little before the time when, &c. escaped out of the said common or waste, called, &c. into the said close in which, &c. through the defect of that fence, and were there for the cause aforesaid, until the said J. of his own wrong, at the said time, when, &c. took the said cattle in the said declaration mentioned, there and then unjustly detained against gages and pledges until, &c. and in manner and form as the said E. hath above thereof complained against him; and this, &c.; wherefore since the said J. hath above acknowledged the taking of the said cattle in the said declaration mentioned, in the said place in which, &c. the said E. prays judgment and his damages by the taking and unjustly detaining of the said cattle in the said declaration mentioned to be adjudged to him, &c.: And for further plea in bar in this behalf, the said E. by leave, &c. says, that he the said J. by reason of any thing by him in his said avowry above alledged, ought not to avow the taking of the said cattle in the said place in which, &c. to be just, &c.; because he says, that the said place in which, &c. now is, and from time whereof, &c. hath lain contiguous and next adjoining to a certain close or piece of land, situate, lying, and being in the parish of St. Martins, in the said county of Salop, called Glynn Morlas, otherwise Glynn Morlas Common, and that the said J. and all other the tenants and occupiers of the said close, now of the said J. in which, &c. for the time being, from time whereof, &c. hitherto of right ought to have maintained and repaired, and until the neglect thereof hereinafter next mentioned, have been used and accustomed to maintain and repair, and the said J. of right out to maintain and repair the fence between the said close of the said J. in which, &c. and the said close or piece of land, called, &c. when and as often as occasion hath required, to prevent the escape of cattle out of the said close or piece of land, called, &c. into the said close in which, &c.: And the said E. further says, that the said A. H. Trevor, esquire, commonly called lord viscount Duncannon of the kingdom of Ireland, long before the said time when, &c. was, and still is lawfully possessed of and in the said close or piece of land, called, &c.; and being so possessed thereof he the said lord viscount Duncannon, a little before the said time when, &c. to wit, on the twenty-first of

of July 1784, at, &c. gave leave and licence to the said E. to feed and depasture his said cattle in the said close or piece of land, called, &c. wherefore he the said E. a little before the said time when, &c. to wit, on the same, &c. put and turned his said cattle into the said close or piece of land, called, &c. to feed on and depasture the grafs there then growing, and being as it was lawful for him to do for the cause aforesaid, and the same remained there for the cause aforesaid by the licence of the said lord viscount Duncannon until the escape thereof hereinafter mentioned; and because the said fence, &c. [as before, &c. &c.]: and this, &c.; wherefore, &c.

And the said John says, that he, by reason of any thing by the said Edward in his said plea by him first above pleaded in bar to the said avowry of the said J. by him above made, ought not to be barred from avowing the taking of the said cattle in the said place in which, &c. to be just; because he says, that the said fence between the said close in which, &c. and the said common or waste, called, &c. mentioned to be maintained and repaired by the said J. and all other the tenants and occupiers of the said place in which, &c. before the said time when, &c. was in good and sufficient repair, and that he the said E. a little before the said time when, &c. wilfully, wrongfully, and injuriously broke down, felled down, prostrated and destroyed, and caused and procured to be broke down, felled down, prostrated, and destroyed the said fence of the said close in which, &c. in divers parts and places thereof, by reason of which said fence of the said close in which, &c. being so broke down, felled down, prostrated, and destroyed, and caused and procured to be broke down, felled down, prostrated, and destroyed by the said E. as aforesaid, the said cattle of the said E. so put into the said common or waste, called, &c. to feed and depasture on the grafs there growing, as in the said plea first above pleaded mentioned, erred and escaped from and out of the said common through the said parts and places in the said fence so wilfully, wrongfully, and injuriously broke down, felled down, prostrated, and destroyed as aforesaid, unto and into the said place in which, &c. and were thereby, and through the said E.'s own wrong and injury, doing damage to the said J. until the said J. took the said cattle for and in the manner of a distress for the said damage so done and doing there, as in his said avowry is mentioned, and detained them until the same cattle, at the complaint of the said E. were replevied, as it was lawful for him the said J. to do; and this, &c.; wherefore as before he prays judgment and a return of the said heifer, together with his damages, costs, and charges, according to the form of the statute in such case made and provided, to be adjudged to him, &c.: And the said J. says, that he, by reason, &c. and because protesting, that the said lord viscount Duncannon did not give leave and licence to him the said E. to feed and depasture the said cattle in the said close or piece of land, called, &c. in manner and form as the said E. hath above in

Replication,
that the fence
before the time
when, &c. was
in good repair,
and that plain-
tiff a little be-
fore the said
time when, &c.
pulled it down.

pleading alledged; for plea nevertheless in this behalf he the said J. says, [same replication as to the first plea in bar].

Drawn by MR. CROMPTON.

Hilary Term, 27. Geo. III.

Plea in bar, that *locus in quo* was contiguous to a common, and which was separated from the common by a fence and ditch; that tenants of the *locus in quo* have been used immemorially to keep up a fence of a proper height, and to scour the ditch; that plaintiff was seised of a messuage and land in right whereof he prescribes for common of pasture on the common for all commonable cattle levant and couchant, and being so seised, plaintiff put the mare and gelding on the common to depasture, and because the said fence was not of a proper height, and also because the ditch was filled up, the cattle strayed out of the common into the *locus in quo*.

AND the said George, as to the said avowry of the said William by him above made, says, that by reason of any thing in the said avowry above alledged, the said William ought not to avow the taking of the said gelding and mare in the said declaration mentioned, in the said place in which, &c. to be just; because he says, that the said place in which, &c. called the Higher Monkey Leaze, at the said time when, &c. lay, and from time whereof the memory of man is not to the contrary, hath lain contiguous and next adjoining on one side thereof to a certain moor, waste, or common, called Common Moor, part of which said place in which, &c. called the Higher Monkey Leaze, on the side thereof, adjoining the said moor, waste, or common, called Common Moor, hath, during all the time aforesaid, been separated and divided from the said moor, common, or waste, by a certain stile and rails, and the residue of the said place in which, &c. called the Higher Monkey Leaze, on the side thereof adjoining the said moor, waste, or common, hath, during all the time aforesaid, been separated or divided from the said moor, waste, or common by a certain ditch or rhine between the same, and which said stile, and rails, and ditch or rhine, during all the time aforesaid, have been the only fence between the said moor, waste, or common, called Common Moor, and the said place in which, &c. called the Higher Monkey Leaze: And the said George further says, that the tenants and occupiers of the said place in which, &c. called the Higher Monkey Leaze, for the time being, from time whereof the memory of man is not to the contrary, have repaired and amended, kept up, and made of proper and sufficient height the said stile and rails, and have scoured and cleansed the said ditch or rhine, and have kept up and repaired the banks and sides of the said ditch or rhine, and have been, and used, and accustomed, and of right ought to repair, amend, keep up, and make of proper and sufficient height the said stile and rails, and to scour and cleanse the said ditch or rhine, and to keep up and repair the banks and sides of the said ditch or rhine between the said place in which, &c. called the Higher Monkey Leaze, and the said moor, common, or waste, called Common Moor, as often as occasion required, to prevent the escape of cattle depasturing and feeding on the said moor, waste, or common into the said place in which, &c. called Higher Monkey Leaze: And the said George further says, that he the said George, long before and at the said time when, &c. was, and still is seised in his demesne as of fee of and in a certain messuage or dwelling-house, and three quarters of an acre of land, with the appurtenances, situate, lying, and being within the borough of L. in the said county, and that he the said George and

and all those whose estate he now hath, and at the said time when, &c. had of and in the said messuage or dwelling-house and land, with the appurtenances, from time whereof the memory of man is not the contrary, have had and have used, and have been accustomed to have, and of right ought to have, for themselves, their farmers and tenants, occupiers of the said messuage or dwelling-house and land, with the appurtenances, common of pasture in and upon the said moor, waste, or common, called Common Moor, for all his and their commonable mares and geldings levant and couchant in and upon the aforesaid messuage and land, with the appurtenances, every year, at all times of the year, at his and their free will and pleasure, as to the said messuage or dwelling-house and land, with the appurtenances, belonging and appertaining; and being so seised of the said messuage or dwelling-house and land, with the appurtenances, as aforesaid, he the said George, a little before the said time when, &c. put the said gelding and mare in the said declaration mentioned, the same being his own gelding and mare and levant and couchant, in and upon his said messuage and land, with the appurtenances, into the said moor, waste, or common, called the Common Moor, to depasture the grafs there then growing, and to use his said common of pasture there as it was lawful for him to do for the cause aforesaid; and because the said stile and rails at the said time when, &c. were ruinous, in decay, low, and not made of proper and sufficient height, and because the said ditch or rhine at the said time when, &c. was choaked and filled up for want of scouring and cleansing thereof, and the banks and sides thereof were prostrate, fallen down, ruinous and in decay for want of keeping up and repairing the same, the said gelding and mare of the said George in the said declaration mentioned, so being in the said common, waste, or moor, called Common Moor, and using his said common there, escaped from and out of the said common, waste, or moor, called Common Moor, into the said place in which, &c. called Higher Monkey Leaze, for want of a sufficient fence, by reason that the said gate, stile, and rails, were ruinous, in decay, low, and not of proper and sufficient height, and that the said ditch or rhine was choaked up, filled up, and the said banks and sides thereof were so prostrate, fallen down, ruinous, and in decay as aforesaid, and were on that occasion in the said place in which, &c. called the Higher Monkey Leaze, until the said William of his own wrong, and at the said time when, &c. and before the said George had notice of the said escape, took the said mare and gelding of him the said George in the said declaration mentioned there, and unjustly detained the same against sureties and pledges until, &c. as the said George hath above in his said declaration alledged; and this he the said George is ready to verify; wherefore since the said William hath avowed the taking of the said mare and gelding of the said George, in which, &c. the said George prays judgment and his damages by reason of the taking and unjustly detaining thereof to be adjudged to him, &c. [2d Plea in bar similar

similar to the first, with this difference only, that it states that the *locus in quo* was divided from the common by a ditch or rhine and gate, which defendant was obliged to repair.]

V. GIBBS.

Replication to the last plea in bar, protesting that plaintiff is not seised of the said messuage and land; for replication, that the cattle were wrongfully in the *locus in quo*; traverse of the right of common.

And the said William, as to the said plea of the said George first above pleaded in bar to the said avowry of the said William, saith, that he by any thing by the said George in that plea alledged, ought not to be barred from avowing the taking of the said gelding and mare in the said declaration mentioned, in the said place in which &c. to be just; because protesting that the said George was not seised in his demesne as of fee of and in a certain messuage or dwelling-house and three quarters of an acre of land, with the appurtenances, situate, lying, and being within the borough of L. in the said county, in manner and form as in and by the said plea of the said George first above pleaded in bar to the said avowry of the said William is above alledged; nevertheless for replication in this behalf the said William saith, that the said cattle at the said time when, &c. were wrongfully in the said place, in which, &c. feeding on the grass there then growing, and doing damage to the said William, in manner and form as the said William hath in his said avowry above alledged; without this, that he the said George, and all those whose estates he now hath, and at the said time when, &c. had, of and in the said messuage or dwelling-house and land last-mentioned, with the appurtenances, from time whereof, &c. have had and have used, and have been accustomed to have, and of right ought to have, for themselves, their farmers and tenants, occupiers of the said messuage or dwelling-house and land, with the appurtenances, last-mentioned, common of pasture in and upon the said waste, moor, or common, called Common Moor, for all his or their commonable mares and geldings levant and couchant, in and upon the said messuage and land last-mentioned, with the appurtenances, every year, at all times of the year, at his and their free will and pleasure, as to the said messuage or dwelling-house and land last-mentioned, with the appurtenances, belonging and appertaining, in manner and form as the said George hath in his said first plea in bar above alledged; and this, &c.; wherefore, as before, he prays, &c. [The 2d replication to the second plea in bar same as first replication, making it conformable to the second plea bar.]

Traverse.

J. MORGAN.

Rejoinder, issue on the traverse.

And the said George, as to the said plea of the said William by him above pleaded in reply to the plea of the said George by him first above pleaded in bar to the said avowry of the said William by him above made, as before says, that the said George, and all those whose estate he now hath, and at the said time when, &c. had, of and in the said messuage or dwelling-house and land, with the

the

the appurtenances, from time whereof, &c. have used, and have been used and accustomed to have and use, for themselves, their farmers and tenants, occupiers of the said messuage or dwelling-house and land, with the appurtenances last-mentioned, common of pasture in and upon the said waste, moor, or common, called Common Moor, for all his and their commonable mares and geldings levant and couchant in and upon the aforesaid messuage and land last-mentioned, with the appurtenances, every year, at all times of the year, at his and their free will and pleasure, as to the said messuage or dwelling-house and land last mentioned, with the appurtenances thereto belonging and appertaining, in manner and form as the said George hath in and by his said plea first above pleaded in bar in that behalf alledged; and this be the said George prays may be enquired of by the country, and the said William doth the like,

V. GIBBS.

Second rejoinder same as first; therefore, &c.

This cause was tried at the Summer assizes 1787, and a verdict was obtained by plaintiff.

CAMBRIDGESHIRE, to wit. James Jepps, late of Barrington, in the county of Cambridge, miller, and John Rayner, of the same place, yeoman, were summoned to answer Richard Rendyske, esquire, &c. for taking thirty-three sheep and twenty-seven lambs at Barrington aforesaid, in a certain place there called the *Middle Field*, &c. &c. and the said defendants by their attorney come and defend the force and injury when, &c. and well avow the taking of the said sheep and lambs in the said declaration mentioned, in the said place in which, &c. and justly, &c. because they say that there now are, and at the said time when, &c. were, and from time whereof the memory of man is not to the contrary have been divers, to wit, three manors within the parish of Barrington, in the said county of Cambridge; extending throughout the same and co-extensive therewith, and that the said place in which, &c. now is, and at the said time when, &c. was, and from time whereof the memory of man is not to the contrary hath been part and parcel of a certain large open field, containing divers, to wit, three hundred acres of land, and containing the land of divers and different freeholders and tenants within the said respective manors and parish, and parcel thereof, and which said lands have from time immemorial lain dispersed in the said open field, not separated or divided from each other: And the said defendants further say, that the master, fellows, and scholars of Trinity College, in the university of Cambridge, now are, and at the said times when, &c. and at the several times hereinafter mentioned were seised in right of the said college of and in the said three manors, with the appurtenances whereof, &c. in their demesne as of fee, and that the said master, fellows, and

Declaration for taking sheep, &c.

Avowry for taking sheep, by the master, fellows, &c. of Trinity College, Cambridge, seised of different manors and a court leet, sets out very particular custom of common of pasture, according to the course of tillage, and custom for the jury to appoint field reeves, and to make bye laws respecting such common, imposing penalties on the breach.

and scholars, and all those whose estate they now have, and at the said times when, &c. had of and in the said three manors, with the appurtenances thereof, &c. from time whereof the memory of man is not to the contrary, have had and held, and have been used and accustomed to have and hold, and during all the time aforesaid of right ought to have and hold, and still of right ought to have and hold, one court leet or view of frankpledge of all the residents and inhabitants of the said three manors, with one court baron within any of the said three manors, at all times when and so often as occasion hath required, to be held before the steward of the said court for the time being for all the said manors: And the said defendants further say, that by the course and method of tillage and husbandry used in the said manors and parish from time whereof, &c. the said open field whereof, &c. has during all the time aforesaid been, and at the said time when, &c. ought to have been, and still ought to be divided into three shifts, and tilled in such a manner as that one of the said shifts should be sown yearly and every year with wheat, rye, and barley, commonly called the first crop, or winter corn, which said shift, after the corn and grain grown thereon has been cut and carried away, as during all the time aforesaid hath been and is called the Haum Field, and that one other of the said shifts called the Brotue Field should be sown yearly and every year with barley, oats, pease, and beans, commonly called the summer corn, and that the remaining one of the said three shifts should yearly and every year be fallow: And the said defendants further say, that within the said parish and manors there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of in the said parish and manors, amongst the tenants and occupiers of the said open fields whereof, &c. for the time being, from time whereof, &c. have had and have used, and have been used and accustomed to have and use, and of right ought to have had and used, and still of right ought to have and use common of pasture in and throughout the said open field whereof, &c. (his own land in the same field only excepted) for his corn and cattle, in and according to certain shifts and proportions, in manner and form following, that is to say, that from and after all the corn and grain have been cut down, taken, and carried away for the cows and great cattle, that is to say, horses, mares, geldings, and oxen, in and over the said shift called the Broke Field, parcel, &c. and in and over the stubbles thereof, from and immediately after the corn and grain, and every part thereof have been so cut down, taken, and carried away, until Michaelmas day according to the old style, and then, to wit, on Michaelmas day according to the old style, for the said cows and great cattle in and over the said shift called the Haum Field, being the stubble field of the first crop or winter corn, parcel, &c. together with the said Broke Field, until the twelfth day of November, being Holimas-day, according to the old style, then next following, and then, that is to say, at Michaelmas-day, old style,

style, for the sheep, together with the said cows and great cattle in and over the said shift, called the Broke Field, parcel, &c. and in and over the stubbles thereof, from Michaelmas-day, according to the old style, until the twenty-third day of October; and then, to wit, on the twenty-third day of October, for the said sheep, together with the said cows and great cattle in and over the said shift called the Haum Field, being the stubble field of the first crop or winter corn, parcel, &c. together with the said Broke Field, until the twelfth day of November, being Holmas-day according to the old style: And the said defendants further say, that within the said manor there now is, and from time whereof, &c. there hath been a certain other ancient and laudable custom there used and approved of within the said manors, that is to say, that the jury of the said court leet or view of frankpledge, with the homage of the said court baron held in and for the said manors from time to time, for and during all the time, have been used and accustomed, at the same court leet, or view of frankpledge with the court baron, to appoint certain persons to be field reeves of the said large and open field, *and to make bye-laws or ordinances, imposing a reasonable sum of money as a penalty upon any person or persons whose cattle should from time to time be found feeding, depasturing, and doing damage on the said shifts and stubbles, contrary to the said custom in that behalf above-mentioned,* and that the said field reeves from time whereof, &c. have been used and accustomed to distrain, and for all the time aforesaid ought of right to have distrained, and still of right ought to distrain such cattle as have from time to time been found depasturing, feeding, and doing damage on the said shifts and stubble, contrary to the said custom in that behalf above-mentioned, and to impound the same in the open and common pound there until the owners thereof have paid the sum of money as a penalty imposed by such bye-laws or ordinance, or until the said cattle have been replevied in due form of law: And the said defendants further say, that at the court leet or view of frankpledge, with a court baron of them, the said master, fellows, and scholars, lords of the said manors, holden in and for the said manors on the twenty-third of July 1776, before Andrew Pemberton, then their steward of the said court, the said defendants were duly appointed field reeves by the jury of the said court leet and the homage of the said court baron, Owen, Cambridge, &c. [here insert the names of the jury] good and sufficient men then being, of the homage of the said court baron then and there duly impanelled, charged, and sworn, and the jury of the said court leet or view of frankpledge, together with the homage of the said court baron, *on the said twenty-third of July 1776, made a certain bye-law or ordinance, that all the sheep should be duly kept out of the haum stubbles in the said open field until the twenty-third of October each and every year, on pain of ten shillings to be paid to the field reeves for every such offence by the owner of such sheep:* And the said defendants
further

further say, that the said place in which, &c. at the said time when, &c. was part and parcel of the shift of the said open field called the Haum Field, and which had in the year preceding the said time when, &c. been sown with the first crop or winter corn, and which had before the said time when, &c. been reaped, taken, carried away, together with the other corn and grain growing in the said open field whereof, &c. in that year, and and that the said sheep and lambs in the said declaration mentioned were in the said place in which, &c. parcel, &c. and of the said shift called the Haum Field, being the stubble field of the first crop or winter corn at the said time when, &c. being before the twenty-third day of October 1788, contrary to the said custom in that behalf above-mentioned feeding and doing damage there, *whereby and by force of the said bye-law or ordinance, the said Richard became liable to pay the reeves of the said open field the sum of ten shillings, being the penalty by the said bye-law or ordinance imposed as aforesaid*; wherefore they the said defendants, as such field reeves as aforesaid, well avow the taking of the said sheep and lambs at the said time when, &c. and justly, &c. as and for a distress for the said sum of ten shillings, the same being at the time of the taking the same, and from thence hitherto unpaid to the said defendants, and this, &c. wherefore, &c. (Second avowry same as first, except stating the distress to be for damage feasant, only omitting the penalty, and therefore omitting the Italics.)

S. LAWRENCE.

Plea in bar.

1st, *De injuria sua*, and traverse of the master, &c. being seised and holding a court, &c.: 2d, *De injuria sua*, and traverse of the custom of common of pasture: 3d. *De injuria sua*, and traverse of the custom for the jury to appoint field reeves and make bye-laws: 4th. *De injuria sua*, and traverse of the field reeve's power to distrain, &c.: 5th. Same as first plea to first avowry: 6th. Same as second to 1st avowry: 7th. *De injuria sua*, and traverse of right of jury to appoint field reeves, and of their right to distrain.

S. LE BLANC.

The replications take issue on the several traverses, the rejoinders add the *similiter*.

This cause was tried at Summer as-

sizes 1789, before Gould, J. and a special jury, when the plaintiff obtained a verdict on the second and sixth issues, and the jury were discharged of the others.

Avowry and cognizance (for taking cattle),

And the said defendants, by their attorney, come and defend the wrong and injury when, &c. and the said J. in his own right that a certain messuage is parcel of a manor demiseable by the lord, and that the *locus in quo* is parcel of the manor wherein there is a custom that every tenant of a customary tenement shall have common of pasture when the *locus in quo* shall have been sown with corn, until it shall have been resown, and also a custom within the manor that the husband of every wife being a tenant, should be possessed of the tenement after her death for the term of his natural life; that the steward of the manor granted the house to the wife, and that she died, whereupon one of the defendants became seised thereof, as her husband, and by virtue thereof was entitled to common of pasture while *locus*, was not resown with corn, and because the cattle were there eating the grass, he well avows, &c. damage feasant.

well

well avows, and the said T. as bailiff of the said J. well acknowledges the taking of the said cattle in the said place called East Field, in which, &c. and justly, &c. because they say that a certain ancient messuage, with the appurtenances, situate, lying, and being at Easington aforesaid, is, and from time whereof, &c. hath been parcel of the manor of Easington Kelnea and Sheffling, in the said county, and a customary tenement of the said manor, demised and demisable by the lord of the said manor for the time being, by the steward of his court for the time being, or his under steward thereof for the time being, by the copy of the rolls of the said court of the said manor, to any person or persons willing to take the same in fee simple or otherwise, at the will of the lord, according to the custom of the said manor: And the said defendants further say, that the said place called the East Field, in which, &c. hath been an ancient common field, containing by estimation three hundred acres of land, lying and being within the manor aforesaid, and parcel of the said manor, within which said manor there is, and from time whereof, &c. hath been an ancient custom used and approved therein, that is to say, that every customary tenant of the said customary tenement, with the appurtenances for the time being, from time whereof, &c. have had and used, and have used and been accustomed, and of right ought to have and use, common of pasture in the said place called East Field, in which, &c. for all their commonable cattle levant and couchant on the said customary tenement, with the appurtenances, every year in which the said place called East Field, in which, &c. hath been sown with corn or grain, from the time of reaping, taking, and carrying away such corn or grain growing there in that year, until the said place called East Field, in which, &c. or some part thereof, hath been resown with corn or grain, as belonging and appertaining to the said customary tenement, with the appurtenances: And the said defendants further say, that within the said manor there is, and from time whereof, &c. there hath been a certain ancient custom used and approved of therein, to wit, that the husband of every wife, being a customary tenant of any customary tenement of the said manor, dying seised in possession, in the lifetime of such husband of any such customary tenement, parcel of the manor aforesaid, granted to her by copy of the court rolls of the court of the said manor, in fee simple, at the will of the lord, according to the custom of the said manor, having had issue born alive by such his said wife, hath had and held, and hath been used and accustomed to have and hold, such customary tenements, with the appurtenances so granted, whereof his said wife died so seised, for and during the term of his natural life, at the will of the lord, according to the custom of the said manor, as customary tenants thereof: And the said defendants further say, that C. Constable, esquire, being seised of the said manor, with the appurtenances whereof, &c. in his demesne as of fee long before the said time when, &c. to wit, at the court of his said manor, holden in and for the said manor on,
&c.

&c. by H. W. gentleman, then the steward of the court of his said manor, by the copy of the rolls of the said manor, granted the said customary tenement, with the appurtenances, to E. the then wife of the said J. to have and to hold the same to the said E. and her heirs, at the will of the lord, according to the custom of the said manor, by virtue of which said grant, the said J. and E. his then wife, in the right of the said E. entered into the said customary tenement with the appurtenances, and were seised thereof in the right of the said Elizabeth in their demesne as of fee, at the will of the lord, according to the custom of the said manor, and being so seised thereof, they the said J. and E. had issue of their bodies one P. D. and afterwards, and long before the said time when, &c. the said E. died so seised of the said customary tenement, with the appurtenances, to wit, at, &c. upon whose death he the said J. by virtue of the said custom of the said manor in that respect mentioned, became and was seised of the said customary tenement, with the appurtenances, for and during the term of his natural life, at the will of the lord, according to the custom of the said manor, and before and at the said time when, &c. was and still is seised thereof as customary tenant thereof: And the said defendants further say, that in the year of Our Lord 1737, the said place called E. F. in which, &c. was sown with corn and grain, and before the said time when, &c. the said corn and grain there growing in that year was reaped, taken, and carried away, and at the said time when, &c. the said place called E. F. in which, &c. or any part thereof, was not resown with any kind of corn or grain; and because the said cattle in the said declaration mentioned, at the said time when, &c. were eating the grass there growing in the said place called E. F. in which, &c. and doing damage there, so that the said J. could not have and enjoy his said common of pasture therein for his said commonable cattle levant and couchant on his said customary tenement, with the appurtenances, and depasturing and using his said common of pasture there in so ample and beneficial a manner as he before that time was used and accustomed to have and enjoy the same, and then of right ought to have had and enjoyed the same, he the said J. in his own right well avows, and the said T. as his bailiff, well acknowledges the taking the said cattle in the said place in which, &c. and justly, &c. as a distress for the said damage, &c. and this, &c. wherefore, &c.

EDW. BOOTLE.

Declaration for taking two oxen and two heifers in E. &c.

Avowry, tenants of the manor have common in the place where, &c.

CRESWICK } GLOUCESTER, to wit. And the said defendant, when, &c. and as bailiff of T. Newton, and TREWBODY. } baronet, well acknowledges the taking of the cattle aforesaid, in the said place in which, &c. and justly, &c. because he says, that the said close called E. in which the taking of

of the cattle aforesaid is supposed to be, is, and at the same time when, &c. and also from time immemorial was a great field, containing forty acres of meadow, situate within the manor of H. in the parish of B. in the county aforesaid, in which said field very many tenants of the manor aforesaid have, and for all the time aforesaid have been accustomed and ought to have common of pasture for all their other beasts and horse beasts in and upon their several respective tenements, parcel of the same manor levant and couchant, from the first Sunday next after the tenth day of August, called S. day, until the first Sunday next after the second day of February, commonly called Candlemas day, yearly and every year, as to their several and respective tenements belonging: And the said defendant further says, that within the manor aforesaid, to wit, at that manor there is, and from time immemorial hath been a certain laudable custom used for the preservation of the grass and the improvement of the common aforesaid, in the meadow aforesaid, that as often as any person or persons, at any time after the mowing and carrying away of the first mowing of the grass in the field aforesaid, called E. yearly growing, and before the said first Sunday next after the said tenth day of August, commonly called S. day in any year, should put any cattle to feed in the field aforesaid, the lord of the manor aforesaid for the time being, from time to time for all the time aforesaid, hath used, been accustomed, and ought to take, distrain, and impound the cattle so being in the field aforesaid, before the day aforesaid, and doing damage there, for the damage done in the field aforesaid: And the said defendant further says, that the said plaintiff, after the first mowing of the grass in the field aforesaid in that year growing, mowed and carried away, and before the said first Sunday next after the said tenth day of August, called S. day, and before the said time when, &c. to wit, the said eighth day of August, in the thirty-fourth year of the reign of the said lord the now king abovesaid, put the cattle in the declaration aforesaid mentioned into the said field called E. whereof the said defendant, as bailiff of the said T. N. then and long before lord of the manor aforesaid, and so thereof seised as of freehold, by his command at the said time when, &c. for the cause aforesaid, well acknowledges the taking of the cattle aforesaid, in the said place where, &c. doing damage there, and justly, &c. and this, &c. wherefore he prays judgment and a return of the cattle aforesaid, together with his damages, costs, and charges by him in this suit in this behalf sustained, to be adjudged to him, &c.

Custom of the manor as to the usage of it.

Breach of the custom.

And the said plaintiff says, that the said defendant, for the reason before alledged, ought not to acknowledge the taking of the cattle aforesaid in the said place where, &c. just, &c. because protesting that within the said manor of H. there is not, nor from time, &c. hath been any such custom used for the preservation of the grass, and the improvement of the common in the

Plea, protesting there is no such custom, that the close is within his own manor.

Traverse.

Issue on the
traverse.

field aforesaid, that as often as any person or persons, at any time after the mowing and taking away of the first mowing of the grass in the field aforesaid called E. yearly growing, and before the said first Sunday next after the tenth day of August in any year, should put any cattle to feed in the field aforesaid, before the said day, and doing damage there, for the damage done in the field aforesaid, in manner and form as the said defendant hath above alledged; for plea the same plaintiff says, that he the said plaintiff, long before the said time when, &c. and also at the said time when, &c. was seised in his demesne as of fee of and in a certain manor called H. in the parish of B. aforesaid, in the county aforesaid, within which said manor the said field called E. is, and at the said time when, &c. and also from time immemorial was, lying and being, and thereof parcel; and that the said defendant of his own wrong, on the said eighth day of August, in the thirty-fourth year abovesaid, at W. aforesaid, in the said place called E. took the cattle aforesaid, and unjustly detained them against sureties and pledges until, &c. in manner and form as the same plaintiff above against him complains; without that, that the said close called E. is, and for time immemorial was, situate within the manor of the said J. N. of H. in manner and form as the said defendant hath above alledged; and this, &c.; wherefore he prays judgment and his damages, by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c.: And the said defendant, as before, says, that the close aforesaid called E. in which, &c. is, and for time immemorial was, situate within the manor of the said J. N. of H. in manner and form as the said defendant hath above alledged; and of this he puts himself upon the country, and the said plaintiff likewise, &c.; therefore the sheriffs are commanded, &c.

Avowry in re-
plevin, for tak-
ing a gelding in
a place called E.
damage feasant.

BAVE
against
CRESWICK. } AND the said defendant, by, &c. when, &c. and well avows the taking of the gelding aforesaid, in the said place in which, &c. and justly, &c.; because he says, that the said place in which, &c. contains, and at the said time when, &c. did contain in itself seventeen acres of pasture, with the appurtenances, in the said parish of B. in the county aforesaid; which said seventeen acres of pasture, with the appurtenances, are, and at the said time when, &c. were, the soil and freehold of him the said defendant; and because the gelding aforesaid, at the said time when, &c. was in the said place in which, &c. eating up the grass then there growing, and doing damage there, the same defendant in his own proper right well avows the taking of the gelding aforesaid in the said place in which, &c. and justly, &c. so doing damage there, &c.; and this, &c.; wherefore he prays judgment and a return of the gelding aforesaid, together with his damages, costs, and charges in this behalf sustained, according to the form of the statute in such case made and provided,

provided, to be adjudged to him, &c.: And the said plaintiff says, that the said defendant, for the reason before alledged, the taking of the gelding aforesaid in the said place in which, &c. ought not to avow to be just; because protesting, that the same place in which, &c. at the said time when, &c. was not the freehold of him the said defendant, as above thereof is supposed; for plea nevertheless the same plaintiff says, that long before the said time of the taking of the gelding aforesaid in the said place in which, &c. as also at the said time when, &c. he the said plaintiff was seised of and in one capital messuage and two hundred acres of land, with the appurtenances, in B. in the county aforesaid, in his demesne as of fee; and that he the said plaintiff, and all those whose estate the same plaintiff then had of and in the said capital messuage and two hundred acres of land, with the appurtenances, at the said time when, &c. and also from time immemorial have had, and for all the time aforesaid have been accustomed and ought to have, common of pasture in the said place in which, &c. for all their horse beasts in and upon their tenements aforesaid levant and couchant, from the first Sunday next after the tenth day of August, commonly called S. day, until the first Sunday next after the second day of February, commonly called Candlemas-day, yearly and every year, as to their tenements aforesaid belonging and appertaining; by reason whereof the said plaintiff, after the first Sunday next after the said tenth day of August, and before the first Sunday next after the second day of February, to wit, on the seventh day of September, in the thirty-fourth year of the reign of the lord the now king aforesaid, the gelding aforesaid, in the declaration aforesaid above specified, then being the proper gelding of him the said plaintiff, upon his tenements aforesaid levant and couchant, into the said place in which, &c. to have his common there, put, as he well might; and the said defendant the said gelding so in the said place in which, &c. put, and feeding on the grass there growing, and using the common of pasture of him the said plaintiff there, afterwards at the said time when, &c. to wit, on the said eighth day of September, in the thirty-fourth year aforesaid, at B. aforesaid, in the said place in which, &c. called E. took, and that gelding unjustly detained against sureties and pledges, in manner and form as the said plaintiff hath above against him complained; and this he is ready to verify; wherefore he prays judgment and his damages, by reason of the taking and unjust detention of the gelding aforesaid, to be adjudged to him, &c.: And the said defendant as before says, that the said seventeen acres of pasture, with the appurtenances, are, and at the said time when, &c. were, the soil and freehold of him the said defendant, as he hath above thereof alledged; without that, that the said plaintiff, and all those whose estate he at the said time when, &c. had of and in the said capital messuage and tenements aforesaid, at the said time when, &c. and also from time immemorial have had, and been accustomed to have, common of pasture in the said place in which, &c. for all their horse beasts in and upon their tenements aforesaid, with

Bar to the avowry.

Seisin in fee.

Prescription for common.

Traverse of the custom.

Traverse.

Issue on the traverse.

field aforesaid, that as often as any person or persons, at any time after the mowing and taking away of the first mowing of the grass in the field aforesaid called E. yearly growing, and before the said first Sunday next after the tenth day of August in any year, should put any cattle to feed in the field aforesaid, before the said day, and doing damage there, for the damage done in the field aforesaid, in manner and form as the said defendant hath above alledged; for plea the same plaintiff says, that he the said plaintiff, long before the said time when, &c. and also at the said time when, &c. was seised in his demesne as of fee of and in a certain manor called H. in the parish of B. aforesaid, in the county aforesaid, within which said manor the said field called E. is, and at the said time when, &c. and also from time immemorial was, lying and being, and thereof parcel; and that the said defendant of his own wrong, on the said eighth day of August, in the thirty-fourth year aforesaid, at W. aforesaid, in the said place called E. took the cattle aforesaid, and unjustly detained them against sureties and pledges until, &c. in manner and form as the same plaintiff above against him complains; without that, that the said close called E. is, and for time immemorial was, situate within the manor of the said J. N. of H. in manner and form as the said defendant hath above alledged; and this, &c.; wherefore he prays judgment and his damages, by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c.: And the said defendant, as before, says, that the close aforesaid called E. in which, &c. is, and for time immemorial was, situate within the manor of the said J. N. of H. in manner and form as the said defendant hath above alledged; and of this he puts himself upon the country, and the said plaintiff likewise, &c.; therefore the sheriffs are commanded, &c.

Avowry in replevin, for taking a gelding in a place called E. damage feasant.

BAVE
against
CRESWICK. } AND the said defendant, by, &c. when, &c. and well avows the taking of the gelding aforesaid, in the said place in which, &c. and justly, &c.; because he says, that the said place in which, &c. contains, and at the said time when, &c. did contain in itself seventeen acres of pasture, with the appurtenances, in the said parish of B. in the county aforesaid; which said seventeen acres of pasture, with the appurtenances, are, and at the said time when, &c. were, the soil and freehold of him the said defendant; and because the gelding aforesaid, at the said time when, &c. was in the said place in which, &c. eating up the grass then there growing, and doing damage there, the same defendant in his own proper right well avows the taking of the gelding aforesaid in the said place in which, &c. and justly, &c. so doing damage there, &c.; and this, &c.; wherefore he prays judgment and a return of the gelding aforesaid, together with his damages, costs, and charges in this behalf sustained, according to the form of the statute in such case made and provided,

And the said James saith, that the said J. Lazonby, by reason of Plea, that plain-
any thing above alledged, ought not to avow the taking of the said tiff was custo-
cattle in the said place in which, &c. to be just; because he saith, mary tenant of
that true it is that the said place in which, &c. contains, and at the said manor
the said time when, &c. did contain in itself four acres of pas- de injuria sua
ture, with the appurtenances, in the parish aforesaid, and that the propria.
said four acres of pasture, with the appurtenances, in which, &c.
are, and at the said time when, &c. were, and from time whereof
the memory of man is not to the contrary, have been lying with-
in and parcel of the said manor of Plumpton, in the county afore-
said; and that within that manor there are, and for all the time afore-
said have been divers customary tenements descendible, and which
have descended from ancestor to heir, of the hereditary right of
the tenements called tenant right respectively held of the lord
of the said manor for the time being, as of that his manor, by di-
vers rents and certain services, according to the custom of
the said manor, as the said Thomas Lazonby has in, and by his said
avowry in that behalf above alledged; but the said James for plea
saith, that he the said James, at the said time when, &c. and long
before was and still is seised of and in a certain messuage and five
acres of land, with the appurtenances, being such customary tene-
ment in the parish aforesaid within the said manor, as of his custo-
mary estate of inheritance in form aforesaid descendible and de-
scending, according to the custom of the said manor, and held of
the lord of the said manor as of that his manor aforesaid, and par-
cel of the same manor; and that within the said manor there is,
and for all the said time whereof the memory of man is not to
the contrary, there hath been a certain custom there used and ap-
proved, that every such customary tenant of the said customary
tenements, with the appurtenances, now of the said James, for the
time being, hath had, and hath used and been accustomed to have,
and of right ought to have common of pasture in the said place
in which, &c. for all his commonable cattle levant and couchant
on the said customary tenement, with the appurtenances, every
year at all times of the year, at his will and pleasure, as belonging to
the said customary tenement, with the appurtenances; wherefore the
said James, before the said time when, &c. to wit, on the eleventh
of May 1749, put the said oxen and heifer in the said declaration
mentioned, being the commonable cattle of the said James, and
levant and couchant on his said customary tenement, with the ap-
purtenances, into the said place in which, &c. to depasture and
feed on the grass there growing, and to use the said common of
pasture of the said James there, which said cattle were there on
the occasion aforesaid until the said J. L. at the said time when,
&c. of his own wrong there took the said oxen and heifer of the
said James, and unjustly detained them against sureties and pledges
until, &c.; and this, &c.; wherefore since, &c.: And the said ad Plea, a right
James, for further plea in bar to the said avowry by leave, &c. of way in respect
saith, that the said J. L. by reason of any thing above alledged, of a customary
ought not to avow the taking of the said cattle in the said place in tenement.
which,

Issue on the traverse.

the appurtenances levant and couchant, from the first Sunday next after the tenth day of August until the first Sunday next after the second day of February, yearly and every year, as to their tenements aforesaid belonging and appertaining, as the said plaintiff hath above thereof alledged; and this, &c.; wherefore, as before, he prays judgment and a return of the gelding aforesaid, together with his damages, costs, and charges, according to the form of the statute aforesaid, to be adjudged to him, &c.: And the said plaintiff, as before, says, that he and all those whose estate he at the said time when, &c. had of and in the capital messuage and tenements aforesaid at the same time when, &c. and also from time immemorial have had, and have been accustomed, and ought to have, common of pasture in the said place in which, &c. for all their horse beasts in and upon their tenements aforesaid levant and couchant, from the first Sunday next after the tenth day of August until the first Sunday next after the second of February, yearly and every year, as to their tenements aforesaid belonging and appertaining, in manner and form as, &c.

Avowry. Damage feasant by a customary tenant.

AND the said J. by J. R. his attorney, comes and defends the wrong and injury, when, &c. and well avows the taking of the said cattle in the said place in which, &c. and justly; and because he says, that the said place in which, &c. containing, and at the said time when, &c. did contain in itself four acres of pasture, with the appurtenances, in the parish aforesaid; which said four acres of pasture, with the appurtenances, in which, &c. are, and at the said time when, &c. were, and from time whereof the memory of man is not to the contrary, have been lying within and parcel of the manor of Plumpton, in the said county of Cumberland; within which said manor there are, and for all the time aforesaid have been divers customary tenements descendible, and which have descended from ancestor to heir, as of the hereditary right of the tenements called tenant right respectively held of the lord of the said manor for the time being, as of that his manor, by divers rents and certain services, according to the custom of the said manor; and that long before the said time when, &c. the said Thomas Lazonby was seised of and in the said four acres of pasture in which, &c. being such customary tenement as of his customary hereditary estate in form aforesaid descendible and descending, according to the custom of the said manor, held of the lord of the said manor as of that his manor aforesaid, and parcel of his said manor; and because the said cattle, at the said time when, &c. were in the said place in which, &c. depasturing the grass therein growing, and doing damage there, the said Thomas well avows the taking of the said cattle in the said place in which, &c. and justly, &c. there doing damage, &c.

And

And the said James saith, that the said J. Lazonby, by reason of Plea, that plain-
any thing above alledged, ought not to avow the taking of the said tiff was custo-
cattle in the said place in which, &c. to be just; because he saith, mary tenant of
that true it is that the said place in which, &c. contains, and at the said manor
the said time when, &c. did contain in itself four acres of pas- de injuria sua
ture, with the appurtenances, in the parish aforesaid, and that the propria.
said four acres of pasture, with the appurtenances, in which, &c.
are, and at the said time when, &c. were, and from time whereof
the memory of man is not to the contrary, have been lying with-
in and parcel of the said manor of Plumpton, in the county afore-
said; and that within that manor there are, and for all the time afore-
said have been divers customary tenements descendible, and which
have descended from ancestor to heir, of the hereditary right of
the tenements called tenant right respectively held of the lord
of the said manor for the time being, as of that his manor, by di-
vers rents and certain services, according to the custom of
the said manor, as the said Thomas Lazonby has in, and by his said
avowry in that behalf above alledged; but the said James for plea
saith, that he the said James, at the said time when, &c. and long
before was and still is seised of and in a certain messuage and five
acres of land, with the appurtenances, being such customary tene-
ment in the parish aforesaid within the said manor, as of his custo-
mary estate of inheritance in form aforesaid descendible and de-
scending, according to the custom of the said manor, and held of
the lord of the said manor as of that his manor aforesaid, and par-
cel of the same manor; and that within the said manor there is,
and for all the said time whereof the memory of man is not to
the contrary, there hath been a certain custom there used and ap-
proved, that every such customary tenant of the said customary
tenements, with the appurtenances, now of the said James, for the
time being, hath had, and hath used and been accustomed to have,
and of right ought to have common of pasture in the said place
in which, &c. for all his commonable cattle levant and couchant
on the said customary tenement, with the appurtenances, every
year at all times of the year, at his will and pleasure, as belonging to
the said customary tenement, with the appurtenances; wherefore the
said James, before the said time when, &c. to wit, on the eleventh
of May 1749, put the said oxen and heifer in the said declaration
mentioned, being the commonable cattle of the said James, and
levant and couchant on his said customary tenement, with the ap-
purtenances, into the said place in which, &c. to depasture and
feed on the grass there growing, and to use the said common of
pasture of the said James there, which said cattle were there on
the occasion aforesaid until the said J. L. at the said time when,
&c. of his own wrong there took the said oxen and heifer of the
said James, and unjustly detained them against sureties and pledges
until, &c.; and this, &c.; wherefore since, &c.: And the said
James, for further plea in bar to the said avowry by leave, &c.
saith, that the said J. L. by reason of any thing above alledged,
ought not to avow the taking of the said cattle in the said place in

ad Plea, a right
of way in respect
of a customary
tenement.

which, &c. to be just; because he says, that true it is that the said place in which, &c. contains, and at the said time when, &c. did contain in itself four acres of pasture, with the appurtenances, in the parish aforesaid; and that the said four acres of pasture, with the appurtenances in which, &c. are, and at the said time when, &c. were, and from time whereof the memory of man is not to the contrary, have been lying within and parcel of the said manor of Plumpton, in the county aforesaid, as the said Thomas L. by his said avowry in that behalf above alledged; but the said James further saith, that he the said James, at the said time when, &c. and long before, was and still is seised of and in a certain customary messuage, and divers, to wit, five acres of land, with the appurtenances, being such customary tenement in the parish aforesaid, within the said manor, as of his customary estate of inheritance in form aforesaid descendible and descending, according to the custom of the said manor, and held of the lord of the said manor as of that his manor aforesaid, and parcel of the same manor; and that the right honourable Henry lord viscount Lonsdale, long before the time of taking the said cattle, was and still is seised in his demesne as of fee of and in the said manor of Plumpton, with the appurtenances; and that the said lord viscount Lonsdale, and all those whose estate he hath, and at the said time when, &c. had of and in the said manor, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and have used, and been accustomed to have for their customary tenants of the said customary tenement, with the appurtenances of the said James, common of pasture in and upon a certain large tract of waste land called Lazonby Fell, in the said county of Cumberland, for all their commonable cattle levant and couchant in and upon the said customary tenement, with the appurtenances, of the said James, every year at all times of the year, as to the said manor of Plumpton, with the appurtenances, belonging and appertaining: And the said James further saith, that within the said manor of Plumpton there is, and for all the time whereof the memory of man is not to the contrary, there hath been a certain custom there used and approved, that every such customary tenement, with the appurtenances, now of the said James for the time being, hath had, and hath used and been accustomed to have, and of right ought to have a certain way from the said customary tenement of the said James into, through, and over the said place in which, &c. unto the said large tract of land called Lazonby Fell, and so back again from the said large tract of land called Lazonby Fell unto the said customary tenement of the said James, to go, pass, and repass with their cattle levant and couchant in and upon the said customary tenement, with the appurtenances, of the said James, for the use and enjoyment of the said common of pasture in Lazonby Fell aforesaid at all times at their will and pleasure: And the said James further saith, that he said James being so seised of and in his customary tenement, with the appurtenances,

tenances, as of his customary hereditary estate in form afore-
said descendible and descending, according to the custom of the
said manor held of the lord of the said manor as of that his
manor aforesaid, and parcel of his said manor, he the said
James, at the said time when, &c. drove his said oxen and heifer
in the said declaration mentioned from his said customary tene-
ment, being his own commonable cattle levant and couchant
thereon, unto and into the said place in which, &c. in the said
way there towards the aforesaid large tract of land called Lazonby
Fell, using the said way there in the said place in which, &c. as
it was lawful for him to do; and the said oxen and heifer in the
said declaration mentioned, at the said time when, &c. were in
the said place in which, &c. passing in and along the said way
there, until the said Thomas of his own wrong, at the said time
when, &c. there took the said oxen and heifer of the said James,
and unjustly detained them against sureties and pledges until, &c.
and this, &c.; wherefore since, &c.

And the said J. L. as to the said plea of the said J. H. first
above pleaded in bar to the said avowry of the said J. L. saith, that
the said cattle, at the said time when, &c. of the wrong and in-
jury of the said J. H. were in the said place in which, &c. de-
pasturing the grass therein growing, and doing damage there as
the said J. L. hath above alledged; without this, that within the
said manor there is, and for all the said time whereof the me-
mory of man is not to the contrary, there hath been a certain
custom there used and approved, that every such customary te-
nant of the said customary tenement, with the appurtenances, now
of the said James for the time being, hath had, and hath used, and
been accustomed to have, and of right ought to have common of
pasture in the said place in which, &c. for all his commonable
cattle levant and couchant on the said customary tenement, with
the appurtenances, every year at all times of the year at his will
and pleasure, as belonging to the said customary tenement with
the appurtenances, as the said James hath above in his said plea
in bar to the said avowry of the said J. L. alledged; and of this
he puts himself upon the country, &c.: And as to the *said plea*
of the said J. H. secondly above pleaded in bar to the said avowry
of the said J. L. he the said J. L. saith, that true it is that the
right honourable lord viscount Lonsdale, long before the said
time when, &c. was, and still is seised in his demesne as of fee of
and in the said manor of Plumpton, with the appurtenances, and
that the said lord viscount Lonsdale, and all those whose estate he
hath, and at the said time when, &c. had of and in his said ma-
nor, with the appurtenances, from time whereof the memory of
man is not to the contrary, have had, and have used, and been ac-
customed to have for their customary tenants of the said custo-
mary tenements, with the appurtenances, of the said James, com-
mon of pasture in and upon the said large tract of waste land cal-
led Lazonby Fell, in the said county of Cumberland, for all their.

Replication to
the first plea,
traverse the
plaintiff's right
in respect of his
customary tene-
ment.

To the ad, that
the cattle were
out of the way.

commonable cattle levant and couchant in and upon the said customary tenement, with the appurtenances of the said James, every year at all times of the year, as to his said manor of Plumpton, with the appurtenances belonging and appertaining, and that within the said manor of Plumpton there is, and for all the said time whereof the memory of man is not to the contrary, there hath been a certain custom there used and approved, that every such customary tenant of the said customary tenement, with the appurtenances, now of the said James for the time being, hath had, and hath used, and been accustomed to have, and of right ought to have a certain way from the said customary tenement of the said James into, through, and over the said place in which, &c. unto the said large tract of land called Lazonby Fell, and so back again from the said large tract of land called Lazonby Fell unto the said customary tenement of the said James, to go, pass, and repass with their cattle levant and couchant in and upon the said customary tenement, with the appurtenances, of the said James, for the use and enjoyment of the said common of pasture in Lazonby Fell aforesaid, at all times at their will and pleasure, as the said J. H. hath above in pleading alledged: But the said J. L. further saith, that the said oxen and heifer at the said time when, &c. of the wrong and injury of the said J. H. were in the said place in which, &c. out of the said way, and at a great distance, to wit, one hundred yards distance from the said way, depasturing on the grass of the said J. L. there then growing, and doing damage there to the said J. L. out of the said way in the said place in which, &c.; and being so depastured on the grass there then growing, and doing damage to the said L. out of the said way in the said place in which, &c. he the said J. L. at the said time when, &c. took the said cattle in the said place in which, &c. so doing damage out of the said way, in manner and form as the said J. L. hath above in his avowry alledged; without this, that the said oxen and heifer, at the said time when, &c. were passing in and along the said way, as the said J. H. hath above in his said plea in bar alledged; and this, &c.; wherefore, &c.

Issue upon that traverse, and verdict for plaintiff on both.

Cognizance damage
feasant upon the soil of
M. A.

AND the said J. P. and T. by R. B. their attorney, come and defend the wrong and injury, when, &c. and as bailiffs of M. A. esquire, well acknowledge the taking of the said cattle in the said place called R. M. in which, &c. and justly, &c.; because they say, that the said place called R. M. containeth, and at the time of taking, &c. did contain eight hundred acres of land, and that part, to wit, two hundred and seventy acres thereof lies, and at the said time of making, &c. lay in the township of B. in the parish aforesaid; which said two hundred and seventy acres, lying in the township of B. parcel, &c. are, and at the said time when, &c. were,

do ; and because the said part of R. M. aforesaid, lying in the said township of B. in which, &c. on the same day and year, and from thence until and at the said time when, &c. was not divided nor separated from the said part of R. M. aforesaid lying within the said township of S. by any hedge, inclosure, fence, or other division whatsoever, sufficient to prevent cattle depasturing in the said part of R. M. aforesaid lying within the said township of S. and using the said common of pasture, from passing and escaping therefrom into the said part of R. M. aforesaid lying in the said township of B. in which, &c. the said cattle of him the said John, so using the said common of pasture as last-mentioned, afterwards, and before the said time when, &c. to wit, upon the same day and year last-mentioned, of their own accord escaped out of the said part of R. M. aforesaid lying within the said township of S. where they were using the said common as aforesaid, and entered into the said part of R. M. aforesaid lying in the said township of B. in which, &c. adjoining thereto by reason of vicinage, and were there for the cause aforesaid eating the grass there then growing, until the said J. P. and T. at the said time when, &c. of their own wrong took the said cattle there, and unjustly detained the same against sureties and pledges until, &c. as the said John by his said declaration above complains against them ; and this, &c. ; wherefore, &c. as before.

And the said J. P. and T. as to the said plea of the said John by *Replication*, him first above pleaded in bar to the said cognizance of the said J. P. and T. by them made, say, that by reason of any thing in that behalf above pleaded by the said John the said J. P. and T. ought not to be barred from their cognizance ; because they as before say, that the said two hundred and seventy acres of land lying in the said township of B. in which, &c. are, and at the said time when, &c. were, the soil and freehold of the said Michael, and that the said cattle of the said John, at the said time when, &c. were in the said two hundred and seventy acres of ground lying in the township of B. in which, &c. eating the grass there growing, and doing damage there by the wrong and injury of the said John, and without the cause by the said John in his said plea in that behalf above alledged ; and this they are ready to verify ; wherefore, as before, they pray judgment and a return of the said cattle together with their damages, according to the form of the statute in such case made and provided, to be adjudged to them, &c. [Same replication to the other plea in bar.]

[Plaintiff demurs, and shews for cause], that the said plea by way *Demurrer*. of replication pleaded concludes with an averment, whereas the the same ought to have concluded to the country ; and that the said plea tends to put in issue several various and sundry matters, when the same ought to have put one single matter in issue only, and that the same is uncertain, not issuable, and wants form, &c.

2d Plea, a right of common by reason of vicinage, in respect of a freehold. judged to him: And the said John, by leave, &c. further saith, that for the reason above alledged by the said J. P. and T. they the said J. P. and T. ought not to acknowledge the taking of the said cattle in the said place in which, &c. to be just; because the said John saith, that another part of R. M. aforesaid, to wit, five hundred acres, parcel thereof lies, and at the said time when, &c. and also from time whereof the memory of man is not to the contrary, lay in the township of S. aforesaid, and that the said five hundred acres, parcel, &c. lying in the said township of S. at the said time when, &c. and also from time whereof the memory of man is not to the contrary, lay contiguous and next adjoining to the said two hundred and seventy acres, parcel, &c. in which, &c. not divided or separated therefrom by any hedge, inclosure, fence, or other division whatsoever, to prevent cattle depasturing in the said part of R. M. aforesaid lying within the said township of S. into the said part of R. M. aforesaid lying in the said township of B. in which, &c. and that the said John, long before the said time when, &c. and also at the said time when, &c. was and yet is seised in his demesne as of fee of and in a certain other messuage and other five acres of land, with the appurtenances, situate, lying, and being in the said township of S. in the said county of York, and that the said John, and all those whose estate he now hath, and at the said time when, &c. had, of and in the said last-mentioned messuage and tenement, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and used, and have been accustomed to have common of pasture in the said part of R. M. aforesaid, lying in the said township of S. for all his and their commonable cattle levant and couchant in and upon the said mentioned messuage and tenement, with the appurtenances, every year at all times of the year, at his and their will and pleasure, as to the said last-mentioned messuage and tenement, with the appurtenances, belonging and appertaining, and that the said John, and all those whose estate he now hath, and at the said time when, &c. had, in his said last-mentioned messuage and tenement, with the appurtenances, for all the time aforesaid, have intercommoned and used, and been accustomed to intercommon in the said part of R. M. aforesaid lying in the township of B. in which, by reason of vicinage, with all their commonable cattle levant and couchant, upon the said last-mentioned messuage and tenement, with the appurtenances, and depasturing in and upon the said part of R. M. lying within the said township of S. every year at all times of the year; and the said John being so seised of the said last-mentioned messuage and tenement, with the appurtenances, he the said John, before the said time when, &c. that is to say, on the said sixth day of June 1741, put his said cattle in the said declaration mentioned, then being his commonable cattle levant and couchant in and upon the said last-mentioned messuage and tenement, with the appurtenances, in and upon the said part of R. M. aforesaid lying in the said township of S. to depasture the grass then growing there, and to use his said common of pasture there as it was lawful for him to do;

do ; and because the said part of R. M. aforesaid, lying in the said township of B. in which, &c. on the same day and year, and from thence until and at the said time when, &c. was not divided nor separated from the said part of R. M. aforesaid lying within the said township of S. by any hedge, inclosure, fence, or other division whatsoever, sufficient to prevent cattle depasturing in the said part of R. M. aforesaid lying within the said township of S. and using the said common of pasture, from passing and escaping therefrom into the said part of R. M. aforesaid lying in the said township of B. in which, &c. the said cattle of him the said John, so using the said common of pasture as last-mentioned, afterwards, and before the said time when, &c. to wit, upon the same day and year last-mentioned, of their own accord escaped out of the said part of R. M. aforesaid lying within the said township of S. where they were using the said common as aforesaid, and entered into the said part of R. M. aforesaid lying in the said township of B. in which, &c. adjoining thereto by reason of vicinage, and were there for the cause aforesaid eating the grass there then growing, until the said J. P. and T. at the said time when, &c. of their own wrong took the said cattle there, and unjustly detained the same against sureties and pledges until, &c. as the said John by his said declaration above complains against them ; and this, &c. ; wherefore, &c. as before.

And the said J. P. and T. as to the said plea of the said John by Replication. him first above pleaded in bar to the said cognizance of the said J. P. and T. by them made, say, that by reason of any thing in that behalf above pleaded by the said John the said J. P. and T. ought not to be barred from their cognizance ; because they as before say, that the said two hundred and seventy acres of land lying in the said township of B. in which, &c. are, and at the said time when, &c. were, the soil and freehold of the said Michael, and that the said cattle of the said John, at the said time when, &c. 52 were in the said two hundred and seventy acres of ground lying in the township of B. in which, &c. eating the grass there growing, and doing damage there by the wrong and injury of the said John, and without the cause by the said John in his said plea in that behalf above alledged ; and this they are ready to verify ; wherefore, as before, they pray judgment and a return of the said cattle together with their damages, according to the form of the statute in such case made and provided, to be adjudged to them, &c. [Same replication to the other plea in bar.]

[Plaintiff demurs, and shews for cause], that the said plea by way Demurrer. of replication pleaded concludes with an averment, whereas the the same ought to have concluded to the country ; and that the said plea tends to put in issue several various and sundry matters, when the same ought to have put one single matter in issue only, and that the same is uncertain, not issuable, and wants form, &c.

&c. [Same demurrer to the other replication; defendants join in demurrer.]

Avowry by a
customary te-
nant, damage
seasant upon the
common.

PATTISON
against

NEWBURN AND OTHERS. } AND the said Simon Newburn,
W. and L. by Thomas Henzell their
attorney, come and defend the wrong
and injury, when, &c. and the said Simon in his own right well
avows, and the said W. and L. as bailiffs of the said S. well acknow-
ledge the taking of the said cattle in the said place in which, &c.
and justly, &c.; because they say, that the said place in which,
&c. contained, and at the said time when, &c. did contain, five
hundred acres of pasture, with the appurtenances, and is, and at
the said time when, &c. and also from time whereof the memory of
man is not to the contrary was, parcel of the manor of Hexham,
in the said county and that long before the said time when, &c.
to wit, on the twenty-second of February 1738, Major Allgood,
gentleman, was seised of the manor of Hexham, with the appurte-
nances, in the said county, in his demesne as of fee, of which said
manor an ancient messuage, with the appurtenances, in Acomb,
in the said county, then and at the said time when, &c. and also
from time whereof the memory of man is not the contrary was,
and yet is also parcel and a customary tenement of the said manor,
and demised and demiseable by copy of the court roll of the same
manor, by the lord of the said manor or his steward of the court of
the said manor for the time being to pay any person or persons
willing to take the same in fee simple or otherwise, at the will of
the lord, according to the custom of the said manor; within which
said manor of Hexham there now is, and from time whereof the
memory of man is not to the contrary was, a certain custom that
all and every the customary tenants of the said messuage, with the
appurtenances, for the time being, respectively have had, and
have used, and been accustomed to have, common of pasture for
all their commonable cattle levant and couchant upon the said
messuage, with the appurtenances, in and upon the said place
called Acomb Fell, otherwise Acomb Common, in which, &c.
every year at all times of the year, as belonging and appertaining
to the said messuage, with the appurtenances; And the said Simon,
W. and L. further say, that the said Major Allgood being so seif-
ed of the said manor, with the appurtenances, in form aforesaid,
he the said Major Allgood, before the said time when, &c.
that is to say, at the court of him the said Major Allgood,
held at the manor of Hexham aforesaid, in and for the said
manor, on the twenty-second of February 1738, before John
Ord, gentleman, then steward of the court of the said manor, by
copy of court roll of the said manor, granted the said ancient mes-
suage, with the appurtenances, amongst other customary tene-
ments of the said manor, to the said Simon Newburn, to have and
to hold the same to the said Simon and his heirs, at the will of the
lord of the said manor, according to the custom of the said manor;
by virtue of which said grant the said Simon, long before the said
time

time when, &c. entered into the said messuage, with the appurtenances, and at the said time when, &c. was, and yet is seised in his demesne as of fee at the will of the lord of the said manor, according to the custom of the said manor; and because the cattle aforesaid, at the said time when, &c. were in the said place in which, &c. depasturing the grafs there then growing, and there doing damage, by reason whereof the said Simon Newburn could not have and enjoy his common of pasture aforesaid, in the said place in which, &c. in so ample and beneficial a manner as of right he then ought to have had and enjoyed the same; he the said Simon in his own right well avows, and the said W. and L. as bailiffs of the said Simon, well acknowledge the taking of the said cattle in the said place in which, &c. and justly, &c. so doing damage there; and this they are ready to verify; wherefore they pray judgment and a return of the said cattle, together with their damages, costs, and charges, according to the form of the statute in this behalf, to be adjudged to them, &c.

And the said William Pattison saith, that for the reasons before alledged neither the said Simon Newburn ought to avow, nor the said W. and L. as his bailiffs, ought to acknowledge the taking of the said cattle in the said plea in which, &c. to be just; because he saith, that the said place in which, &c. now is, and at the said time when, &c. and from time whereof the memory of man is not to the contrary was, called and known as well by the name of Acomb Fell, otherwise Acomb Common, and that true it is that the said place in which, &c. contained, and at the said time when, &c. did contain five hundred acres of pasture, with the appurtenances, and is, and at the said time when, &c. and also from time whereof the memory of man is not to the contrary was, parcel of the manor of Hexham, in the said county; but the said William Pattison further saith, that long before the said time when, &c. and also long before the said Major Allgood had any thing of and in the said manor of Hexham, with the appurtenances, in the said county, that is to say, the eighth of June 1675, one John Fennick, esquire, was seised of and in the said manor of Hexham, with the appurtenances, in the said county, whereof the said place in which, &c. then was, and yet is parcel in his demesne as of fee, and at the said time when, &c. the said John Fennick was so seised of and in the said manor of Hexham, with the appurtenances, as aforesaid, whereof, &c. the said John Fennick and one Theophilus Anderton, gentleman, were seised of and in a certain parcel of ground containing two hundred and fifty acres called Akwood, with the appurtenances, lying and being in the said parish of St. John, in the said county of Northumberland, in his demesne as of fee; and the said John Fenwick and Theophilus Anderton being so seised of and in the said parcel of ground, with the appurtenances, as aforesaid, and the said John Fenwick being at the said time so seised of the said manor of Hexham, with the appurtenances, whereof, &c. as aforesaid, they the

Plea, that the preceding lord had enfeoffed A. S. of a piece of ground, and granted him common of pasture.

said

Averment, that the time of the making the grant there was sufficient common.

rington, to have and to hold to the said W. P. and W. E. from the feast of the Annunciation of the Blessed Virgin Mary then next following for so long time as the said Mary and W. P. and W. E. should please; by virtue of which said demise the said W. P. and W. E. afterwards, and before the said time when, &c. to wit, on the morrow of the said last-mentioned feast, entered into the said parcel of ground called Akwood, with the appurtenances, then and continually from thenceforth hitherto were and still are possessed thereof: And the said W. P. does aver, that at the time of making of the said grant of the said common of pasture in the said place in which, &c. for all commonable cattle of the said customary tenement of the said Simon Newburn, for the time then being, and of all other persons having common of pasture there, over and besides the said common of pasture so granted to the said Anthony Sharp and his heirs, and that the said Anthony Sharp, and all the said other tenants and occupiers of the said parcel of ground called Akwood, for the time being, from the time of making the said grant unto the said time when, &c. have used, and been accustomed to have, and still of right ought to have common of pasture in the said place in which, &c. for all their commonable cattle levant and couchant in and upon the said parcel of ground called Akwood, every year at all times of the year, as belonging and appertaining to the said parcel of ground called Akwood; by virtue of which said grant, and the said W. P. being so possessed of the said parcel of ground, before the said time when, &c. that is to say, the nineteenth of April 1742, did put the said cattle, being his own commonable cattle levant and couchant upon the said parcel of ground called Akwood, into and upon the said place in which, &c. to depasture the grass there then growing, and to use his said common of pasture there as it was lawful for him to do; and the said cattle were in the said place in which, &c. depasturing upon the grass there then growing, using the said common of pasture there, until the said S. W. and L. of their own wrong, at the said time when, &c. took the said cattle of him the said W. P. and unjustly detained the same against sureties and pledges until, &c. in manner and form as the said William hath above thereof complained against them; and this he is ready to verify; wherefore since the said S. W. and L. have above acknowledged the taking of the said cattle in the said plea in which, &c. the said W. P. prays judgment and his damages, by reason of the taking and unjustly detaining of the said cattle, to be adjudged to him, &c.

Replication, traverse the sufficiency of common.

And the said J. W. and L. say, that by any thing by the said W. P. in pleading above alledged, they ought not to be barred in this behalf, to wit, the said Simon, from having his said avowry, nor the said W. and L. from having their said cognizance; because protesting that neither the said Ann Sharp, nor the said other tenants and occupiers of the said parcel of ground called Akwood, for the time being, from the time of making the said grant

the appurtenances : And the said S. W. and L. further say, that the said cattle of the said W. P. of the said W. P.'s own wrong, at the said time when, &c. were in the said place in which, &c. depasturing the grafs then growing there, and doing damage there, by reason whereof the said S. could not have and enjoy his said common of pasture in the said place in which, &c. in so ample and beneficial a manner as of right he then ought to have had and enjoyed the same, as in the said avowry and cognizance is above alledged; without this, that at the time of making of the said grant of the said common of pasture in the said place in which, &c. to the said A. S. by the said John Fenwick, as in the said plea in bar to the said avowry and cognizance is above-mentioned, there was left sufficient common of pasture in the said place in which, &c. for all the commonable cattle of the said customary tenant of the said customary tenement of the said Simon for the said time then being, and all other persons having common of pasture there, over and besides the said common of pasture granted to the said Anthony Sharp and his heirs as aforesaid, as the said W. P. hath above in pleading alledged; and this the said S. W. and L. are ready to verify; wherefore, as before, they pray judgment and a return of the said cattle, together with their damages, may be adjudged to them, &c.

R. DRAPER.

Issue upon traverse.

Cognizance for taking a mare, damage feasant.

AND the said M. J. N. the elder, and J. N. the younger, by A. B. their attorney, come and defend the wrong and injury, when, &c.; and as bailiff of M. R. well acknowledge the taking of the said mare in the said place in which, &c. contains, and at the said time when, &c. did contain five hundred acres of pasture, with the appurtenances, in the parish of B. aforesaid; which said five hundred acres of pasture, with the appurtenances, are, and at the said time when, &c. were the soil and freehold of the said M. R.; and because the said mare, at the said time when, &c. was in the said five hundred acres of pasture depasturing the grafs therein then growing, and then doing damage, the said M. J. N. and J. N. as bailiffs of the said M. R. well acknowledged the taking of the said mare in the said place in which, &c. and justly, &c. there doing damage, &c.

Plea in bar, common of pasture belonging to a customary tenement which was demised to plaintiff by J. S.

And the said George saith, that the said J. R. and J. N. as bailiffs of the said M. R. ought not to acknowledge the taking of the said mare in the said place in which, &c. as just; because he says, that the said place called Black Line Rigg, in which, &c. as at the said time when, &c. was, and from time immemorial hath been part and parcel of a certain great waste or common called Blacklerin, lying and being in the parish aforesaid, and within the manor of Bewcastle, in the said county of Cumberland, and parcel of that manor; within which said manor there are, and from time whereof the memory of man is not to the contrary, have been divers customary tenements descendible, and which have descended

descended from ancestor to heir as tenant right estates respectively held of the lord of the said manor for the time being as of the said manor, by diverse rents and certain services according to the custom of the said manor: And the said George further saith, that before and at the said time when, &c. one Allen Routledge was and still is seised of and in a certain messuage and forty acres of land called the Raw, with the appurtenances, being such customary tenement as of his customary tenant right estate in form aforesaid descendible and descending according to the custom of the said manor, held of the lord of the said manor as of his manor, and parcel of the manor aforesaid; and that within the said manor there is, and from time whereof the memory of man is not to the contrary, there hath been an ancient custom there used and approved, that every such customary tenant of the said customary tenement, with the appurtenances, whereof the said Allen is seised as aforesaid for the time being, ought to have, and for the whole time aforesaid hath had and used, and hath been used and accustomed to have for himself and his farmers, or farmer thereof respectively, common of pasture in the said waste or common called Blacklerin, whereof, &c. for all his and their commonable cattle respectively levant and couchant on the said customary tenement, with the appurtenances, every year at all times of the year, as belonging and appertaining to the said customary tenement, with the appurtenances: And the said Allen being so seised of the said messuage and forty acres of land as aforesaid, he the said Allen, before the said time when, &c. to wit, the twentieth of March 1740, at the parish aforesaid, demised to the said George and one William Davison the said messuage and forty acres of land, with the appurtenances, to have and to hold to the said George and William Davison from thenceforth for one whole year, and so from year to year as long as it should please the said parties; by virtue of which said demise the said George and William Davison entered into the said demised premises, with the appurtenances, and before the said time when, &c. were and yet are possessed thereof, and being so possessed thereof, the said George, before the said time when, &c. the same day and year in the said declaration mentioned, put the said mare in the said declaration mentioned, being his own proper mare levant and couchant upon the said customary messuage and tenement, with the appurtenances, so as aforesaid demised into the said place in which, &c. parcel, &c. to feed upon the grass there growing, and to use the said common of pasture of the said George and William there as it was lawful for him to do, and the said mare was depasturing in the said place in which, &c. parcel, &c. for the cause aforesaid, until the said M. J. N. and J. N. at the said time when, &c. of their own wrong took the said mare in the said declaration mentioned in the said place in which, &c. parcel, &c. and unjustly detained her against sureties and pledges until, &c. as the said George hath above complained against them; and this the said George is ready to verify; wherefore soasmuch as the said M. J. N. and J. N. have acknowledged the taking of the said

REPLEVIN.—DECLARATION—COGNIZANCE.

mare in the said place in which, &c. parcel, &c. he the said George prays judgment and his damages, on occasion of the premises, to be adjudged to him, &c.

Replication, traverse that custom.

And the said M. J. N. and J. N. say, that by reason of any thing above pleaded by the said George, they the said M. J. N. and J. R. ought not to be barred from their said cognizance; because they say, that the said five hundred acres of pasture in which, &c. are, and at the said time when, &c. were the soil and freehold of the said M. R. as they have above alledged, and that the said mare, in the said declaration mentioned, was in the said place in which, &c. depasturing the grass there growing, and doing damage there of the wrong and injury of the said George; without this, that within the said manor there is, &c. [traverse the custom set out in the plea] in manner and form as the said George hath in his said plea above alledged; and this, &c.; wherefore they pray judgment and a return, &c.

R. joinder in affirmance of the custom, and verdict for plaintiff.

FINES AND AMERCIAMENTS.

Declaration in replevin.

in INGRAM AND HALE } STAFFORDSHIRE, to wit. Joseph
at the suit of } Ingram and John Hale were summoned to
FLETCHER. } answer James Fletcher in a plea why they
took the cow of him the said James, and unjustly detained it against sureties and pledges, &c.; and whereupon the said James, by John Lilly his attorney, complains that the said Joseph and John, on the twentieth day of February, in the seventh year of the reign of the lord William the Third, now king of England, &c. at Shenston, in the county aforesaid, in a certain place there called the Lane, took the cow aforesaid of him the said James, and unjustly detained it against sureties and pledges until, &c. whereby the said James says that he is prejudiced, and hath damage to the value of twenty pounds; and therefore he produces the suit, &c.

Cognizance for a distress for a fine at a court leet.

And the said Joseph and John Hale, by Thomas Callowe their attorney, come and defend the force and injury, when, &c. and as bailiffs of Rowland Fryth, gentleman, well acknowledge the taking of the cow aforesaid in the said place in which, &c. and justly, &c.; because they say, that the same place in which the taking of the cow aforesaid is supposed to be contains, and at the said time when the taking of the cow aforesaid is supposed to be contained in itself an acre of land, with the appurtenances, in Shenston aforesaid; which said town of Shenston is, and at the said time when, &c. and also from time out of mind was within the manor of Shenston, with the appurtenances, in the county aforesaid; of which said manor, with the appurtenances, the said Rowland is, and at the time when, &c. and long before, was seised in his demesne as of fee; and the said Rowland, and all those whose estate he hath in the same manor, with the appurtenances,

Seisin in fee. Prescription for a court leet.

nances, for time out of mind have had, and been accustomed to have a court leet or view of frankpledge of the same manor, and whatever to view of frankpledge belongs of all the inhabitants and residents of that manor, before the steward of the same court for the time being, every year within a month next after the feast of St. Michael the Archangel at that manor yearly to be held, as to the same manor, with the appurtenances belonging: And the same Joseph and John further say, that within the manor aforesaid there is, and from time out of mind hath been such custom, Custom to that the jurors to enquire and present those things which to that choose constable court leet and view of frankpledge belong, charged and sworn, ble. at the court view of frankpledge of the manor aforesaid, held at that manor within a month next after the feast of St. Michael the Archangel yearly have chosen, and for all the time aforesaid have been accustomed to choose a proper man from the inhabitants within the manor aforesaid, to be constable of the constablewick of Shenston aforesaid, to serve for one year in that office; which said man so elected hath taken upon himself, and for all the time aforesaid hath been used and accustomed to take upon himself that office, and hath taken and been accustomed to take an oath for the due execution of that office, under a reasonable penalty for all the time aforesaid, by the jurors aforesaid, at such court leet and view of frankpledge of that manor, held at A court leet that manor within a month next after the feast of St. Michael the held. Archangel, to wit, on the ninth day of October, in the fifth year of the reign of the lord William now king, and the lady Mary, late queen of England, &c. before Henry Fryth, gentleman, then steward to the said Rowland of that court, the said James Fletcher then and long before being an inhabitant within the manor aforesaid at Shenston aforesaid, and a proper man to be a constable of the said constablewick of Shenston aforesaid, by E. Thornton, T. Grace, J. C. J. A. J. H. W. M. W. R. N. W. T. S. J. M. J. S. J. A. and J. D. good and lawful men, and inhabiting within the manor aforesaid, and then and there in the same court charged and sworn to enquire and present those things which to that court leet and view of frankpledge belonged, duly, and according to the custom aforesaid, was chosen to be constable of the constablewick of Shenston aforesaid for The plaintiff one year then next ensuing to serve in that office; and those elected constable jurors then and there in the same court ordered, that the said ble. James should take his oath for the due execution of his of- The order of the fice aforesaid, under the penalty of forfeiting forty shillings, jury. whereof the said James Fletcher immediately afterwards, to The penalty for wit, the same day and year, there had notice (a); neverthe- not serving.

(a) The Chief Justice held this to be nought: they should only elect him, and he should have notice of such election; and if he did not thereupon go to the justice of the peace to be sworn, he should be presented for this default at the next court, and be amerced, and the amercement affixed. The court also held it nought for not laying the notice more par-

ticular, as that he was present in court, or that he had notice given that he was elected constable, and required to take an oath before a justice of peace. A second presentment prout per record, &c. The fine not paid. Note. It is said in a case in Moore, that the bailiffs should have had a warrant from the steward to distraint.

less the said James hath not taken his oath for the due execution of the office of constable aforesaid, nor hath executed or taken upon himself that office, but to do it then and often afterwards there absolutely refused; wherefore afterwards and before the said time when, &c. to wit, at a court leet or view of frankpledge of the said manor of the said Rowland, held at that manor within a month next after the feast of St. Michael the Archangel, to wit, on the eleventh day of October, in the sixth year of the reign of the said lord king William and the lady Mary, late queen of England, before Henry Fryth, then steward to the said Rowland of that court, by Edward Thornton, J. C. W. P. T. G. J. P. J. J. E. H. T. S. J. M. W. M. G. H. J. S. the younger, and J. A. good and lawful men then inhabiting within the manor aforesaid, then and there in the same court sworn and charged to enquire and present those things which to that court leet or view of frankpledge belonged, it was presented that the said James Fletcher, because he was duly elected to be constable of the constablewick of Shenston aforesaid, at the last leet held for the manor aforesaid, and under the penalty of forty shillings on him set, was ordered to take upon himself that office, and execute it, and take his oath in form aforesaid for the due execution of that office, which, or any part whereof, he had not done, wherefore he had forfeited to the lord of the manor aforesaid, as by the record thereof in the custody of the steward of the court of the manor of him the said Rowland at that manor remaining more fully appears; and because the said forty shillings for that penalty to the same Rowland so as aforesaid being lord of the manor aforesaid, at the said time when, &c. were in arrear and unpaid, the same Joseph and John Hale, as bailiffs of him the said Rowland, well acknowledge the taking of the cow aforesaid in the said place in which, &c. and justly, &c. for the same forty shillings for the penalty or amerciament aforesaid to the said Rowland, so being in arrear and unpaid, and within the manor aforesaid, &c.

Demurrer.

And the said James says, that by any thing by the said Joseph and John above in the cognizance aforesaid by pleading alledged, the same Joseph and John in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to acknowledge the taking of the cow aforesaid in the said place in which, &c. just, and that he to the cognizance in manner and form aforesaid made and pleaded, hath no necessity, nor is by the law of the land obliged to answer; and this he is ready to verify; wherefore for want of a sufficient plea in this behalf the same James prays judgment and his damages, by reason of the taking and unjust detention of the cow aforesaid, to be adjudged to him, &c.

Joinder of demurrer.

And the said Joseph and John say, that the plea aforesaid by them the said Joseph and John in manner and form aforesaid above pleaded,

pleaded, and the matter in the same contained, are good and sufficient in law for them the said Joseph and John to acknowledge the taking of the cow aforesaid in the said place in which, &c. just; which said plea, and the matter in the same contained, they the said Joseph and John are ready to verify and prove as the court, &c.; and because the said James hath not pleaded or answered to that cognizance, nor hitherto any way denied it, the same Joseph and John pray judgment and a return of the cow aforesaid, together with their damages, costs, and charges, according to the form of the statute in such case made and provided, to be adjudged to them, &c.; but because the court of the said lord the king now here are not yet advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the lord the king, until wheresoever, &c. to hear their judgment of and upon the premises, because the court of the said lord the king now here thereof not yet, &c.

SILAS TITUS, ESQUIRE, } HERTFORD, to wit. William
 against } Parkins, late of Bushey, in the coun- Declaration.
 PARKIN'S, KNIGHT. } ty aforesaid, knight, was summoned
 to answer to Silas Titus, esquire, in a plea, why he took the
 cattle of him the said Silas, and unjustly detained them against
 sureties and pledges, &c.; and whereon the same Silas, by John
 Warburton his attorney, complains that the said William, on the
 eighteenth day of May, in the first year of the reign of the lord
 James the Second, now king of England, &c. at Bushey, in a
 certain place there called Mary Hill Ground, the cattle of him
 the said Silas, to wit, thirty-six wether sheep, twelve ewe sheep,
 and eight lambs, took and unjustly detained them against sureties
 and pledges until, &c. whereby the same Silas says that he is pre- 3. Lev. 225.
 judiced, and hath damage to the value of ten pounds; and there-
 fore he produces the suit, &c.

And the said William, by Randal Baldwin his attorney, comes
 and defends the force and injury, when, &c. and the said William,
 in his own proper right, well avows, and as bailiff to Algernon,
 earl of Essex, well acknowledges the taking of the cattle aforesaid
 in the said place in which, &c. and justly, &c.; because he says,
 that the same place in which the taking of the cattle aforesaid is
 supposed to be, did contain in itself two acres of pasture, with the
 appurtenances, in Bushey aforesaid; which said two acres of pas-
 ture, with the appurtenances, are, and at the said time when, &c.
 were the soil and freehold of them the said William and Alger-
 non, earl of Essex; and because the cattle aforesaid, at the said
 time when, &c. were in the said two acres of pasture eating up
 the grass in the field then growing, and doing damage there, the
 same William, in his own proper right, well avows, and as bai-
 liff to said Algernon, earl of Essex, well acknowledges the taking
 of the cattle aforesaid in the said place in which, &c. and justly,
 &c. so doing damage there, &c.

Avowry and
 cognizance for
 damage feasant.

Bar, that the
locus in quo is co-
pyhold, held of
the manor of
Bushey, &c.

That the defen-
dant, being lord
of the manor,
granted it to the
plaintiff in fee
according, &c.

and he being
seised, put in his
cattle,

and the defen-
dant distrained
them.

Replication,
that the land is
held of the ma-
nor of B.

And the said Silas says, that the said William, for the reason before alledged, the taking of the cattle aforesaid in the said place in which, &c. ought not in his own proper right to avow, and as bailiff of the said earl, to acknowledge just; because he says, that the said two acres of pasture in which, &c. are, and at the said time when, &c. and also from time immemorial were parcel of the manor of Bushey, and customary land of the same manor, and demised and demiseable by copy of court rolls of that manor, by the lord or lords of the same manor, or by their steward of the court of that manor for the time being, to any person or persons willing to take them in fee simple or otherwise, at the will of the lord or lords, according to the custom of the manor aforesaid: And the same Silas farther says, that the said earl and William, before the said time when, &c. to wit, on the twenty-first day of April, in the first year of the reign of the said lord the now king aforesaid, were lawfully lords of the manor aforesaid, the same earl and William afterwards, and before the said time when, &c. to wit, on the same twenty-first day of April, in the first year aforesaid, at a court of them the said earl and William of their manor aforesaid, then held for that manor within the manor at Bushey aforesaid, in the county of Hertford, by one Thomas Smith, gentleman, then and there steward of the court of their manor aforesaid, by copy of court roll of that manor granted the said two acres of pasture, with the appurtenances, in which, &c. among other things, to the said Silas, to have and to hold to the same Silas, his heirs and assigns for ever at the will of the lords, according to the custom of the manor aforesaid; and the same Silas, according to the custom of the manor aforesaid, he the said Silas being so thereof seised, the same Silas, before the said time when, &c. put his cattle aforesaid into the said two acres of pasture in which, &c. to feed on the grafs there then growing, and those cattle were in the said two acres of pasture in which, &c. feeding on the grafs there then growing, until the said William Parkins, on the said eighteenth day of May, in the first year aforesaid, at Bushey aforesaid, in the said two acres of pasture called Mary Hill Grounds, in which, &c. took of the same cattle of the said Silas above against him complains; and this he is ready to verify; wherefore for that the said William Parkins the taking of the cattle aforesaid hath above confessed, the same Silas prays judgment and his damages, by reason of the taking and unjust detention of those cattle, to be adjudged to him, &c.

And the said W. says, that well and true it is that the said two acres of pasture, with the appurtenances in which, &c. are, and at the said time when, &c. and also from time immemorial, were parcel of the said manor of Bushey and customary lands of the same manor, and demised and demiseable by copy of court roll of that manor by the lord or lords of the same manor, or by their steward of the court of that manor for the time being, to any person or persons willing to take them in fee simple or otherwise at the

the will of the lord or lords, according to the custom of the manor aforesaid; and the said earl and W. before the said time when, &c. to wit, on the twenty-first day of April, in the first year of the reign of the said lord the now king aforesaid, were lawfully lords of the manor aforesaid, and that the said earl and W. then being lords of the manor aforesaid, the same earl and W. afterwards and before the said time when, &c. to wit, on the said twenty-first day of April, in the first year aforesaid, at Bushey aforesaid, in the county aforesaid, by the said T. Smith, then and there steward of the court of the manor aforesaid, by copy of the court roll of that manor granted the said two acres of pasture, with the appurtenances in which, &c. among other things, to the said Silas, according to the form of the manor aforesaid was then and there admitted tenant thereof; and that by virtue of a grant and admission aforesaid he the said Silas, before the said time when, &c. into the said two acres of pasture, with the appurtenances, among other things, entered and was thereof seised in his demesne as of fee at the will of the lords, according to the form and custom of the manor aforesaid, as the said Silas above by pleading hath alledged; but the said W. Parkins farther says, that the said two acres of pasture, with the appurtenances in which, &c. together with the other lands and tenements in the same copy mentioned, and by the same copy to the said Silas and his heirs granted, and to which the said Silas was as aforesaid admitted at the said time of the admission of the said Silas to the same, were and yet are of the clear yearly value of twenty-eight pounds, and that the said earl and W. by the said T. Smith in the said full court of the manor aforesaid held within that manor on the said twenty-first day of April, in the first year of the reign of the said lord the now king aforesaid, he the said T. Smith being then steward aforesaid of the said earl and W. then lords of the manor aforesaid, of the said court of the said manor aforesaid, after the said admission of the said S. Titus to the said two acres in which, &c. and the said other lands and tenements by the copy aforesaid made to the said Silas granted then and there, did assess and appoint the sum of thirty-five pounds for the fine for the said grant to the said Silas of the said two acres of pasture, with the appurtenances in which, &c. and the other lands and tenements aforesaid, by the copy aforesaid in form aforesaid granted, to be paid by him the said Silas to the said earl and W. being as aforesaid lords of the manor aforesaid, on the first day of May then next ensuing, at the porch of the parish church of Bushey aforesaid, in the said county of Hertford; and that the said Silas then and there, to wit, at the manor aforesaid, of all and singular the premises had notice: And the said W. further says, that the fine aforesaid for the lands and tenements by the copy aforesaid in manner and form aforesaid granted to the said Silas, was a reasonable fine; and that the said S. Titus, although he had notice from the said lords of the manor aforesaid, at the court aforesaid held as aforesaid at the manor aforesaid, on the twenty-first day of April aforesaid,

Grant by copy.

The yearly value.

The fine.

Forfeiture for
non-payment.
Denial to pay an
uncertain fine is
no forfeiture.
Raym. 42.
Co. Ent. 647.
There ought to
be a demand,
Cro. El. 779.
Cro. Jac. 617.

21. H. 8. c. 19

aforesaid, of the premises aforesaid, did not pay to the said earl and W. lords of the manor aforesaid, or either of them, the said sum of thirty-five pounds for the fine aforesaid in form aforesaid assessed, on the said first day of May then next ensuing the admission of him the said Silas at the said porch of the parish church of Bushey aforesaid, but the same thirty-five pounds to the said earl and W. then and there absolutely denied and refused, and yet doth refuse to pay; whereby the same S. T. hath forfeited to the said earl and W. being as aforesaid the said lords of the manor aforesaid, whereof, &c. all his customary right, estate, title, and interest aforesaid of and in the said two acres of pasture, with the appurtenances in which, &c. and the said other lands and tenements in the grant aforesaid specified; after which said forfeiture in form aforesaid made, and before the said time when, &c. the said earl and W. being as aforesaid lords of the manor aforesaid into the said two acres of pasture, with the appurtenances in which, &c. entered, and were and are thereof seised in their demesne as of fee; and because their cattle aforesaid, after the entry aforesaid, to wit, at the said time when, &c. were in the said two acres of pasture, with the appurtenances in which, &c. eating up the grass in the same then growing, and doing damage there, the said W. as before in his own proper right well avows, and as bailiff to the said earl well acknowledges the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. so doing damage there; and this he is ready to verify; wherefore as before he prays judgment and a return of the cattle aforesaid together with his damages, costs, and expences by him about his suit in this behalf sustained, according to the form of the statute in such case made and provided, to be adjudged to him, &c.

Rejoinder,
protesting the
fine is unreasonable. Pleads
a custom to pay
a year's value
only.

That the land is
worth but 28l.
per ann. which
he offered to
pay.

And the said Silas, protesting that the sum aforesaid of thirty-five pounds for the fine aforesaid for the said lands and tenements by the copy aforesaid to the said Silas, in manner and form aforesaid granted, was not a reasonable fine, as the said W. above by pleading hath alledged; for plea the same Silas says, that within the manor aforesaid there is, and from time immemorial hath been such custom used and approved of within that manor for all the time aforesaid, to wit, that every person or persons who should be admitted tenant or tenants to any customary lands or tenements of that manor, by copy of court roll of that manor, hath and have been, and ought to pay to the lord or lords of the same manor for the time being, for a fine of his or their admission to such customary lands or tenements so much money as those lands and tenements were worth by the year at the time of such admission, and no more: And the said Silas in fact says, that the said two acres of pasture, with the appurtenances in which, &c. together with the other lands and tenements in the same copy mentioned, and by the same copy to the said Silas and his heirs granted, and to which the said Silas was as aforesaid admitted,

admitted, at the time of the admission of the said Silas to the same, were worth, and yet are worth by the year twenty-eight pounds and no more: And the same Silas farther says, that at the time of his admission to the tenements aforesaid, with the appurtenances, to wit, at the said court of the manor held within that manor on the said twenty-first day of April, in the first year aforesaid, he was ready, and offered to pay to the said W. then one of the lords of that manor, being then and there present in his own proper person, so much money as the said customary tenements were worth by the year at the time of the admission of him the said Silas to the same, to wit, twenty-eight pounds of lawful money of Great Britain; which said twenty-eight pounds the said W. then and there absolutely refused to receive or accept of the same Silas; and this he is ready to verify; wherefore as before he prays judgment and his damages, by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c.

And the said W. says, that the plea of the said Silas above in **Demurrer;** rejoining pleaded, and the matter in the same contained, are not sufficient in law to preclude him the said W. from having his avowry and cognizance aforesaid, and that he to that plea in manner and form aforesaid pleaded, hath no necessity, nor is by the law of the land obliged to answer; and this he is ready to verify; wherefore for want of a sufficient plea in this behalf, the same W. as before, prays judgment and a return of the cattle aforesaid, together with his damages, costs, and expences by him about his suit in this behalf sustained, according to the form of the statute in such case thereof lately made and provided, to be adjudged to him, &c.: And for cause of demurrer in law to that plea, the same W. according to the form of the statute in such case thereof lately made and provided, sets down, and to the court here expresses this **The cause.** cause following, to wit, that the value of the lands remain in **27. Eliz. c. 5.** estimation, and the custom aforesaid by the said Silas above in **4 Ann, c. 16.** pleading pretended and alledged, is uncertain, insufficient, and void of law.

And the said Silas, for that he hath above alledged sufficient **Joinder in de-** matter in law in his plea aforesaid above in rejoining pleaded, to **murrer.** preclude the said W. from having his avowry and cognizance aforesaid, which he is ready to verify, which said matter the said W. doth not deny, nor thereto in anywise answer, but altogether refuses to admit that averment, as before prays judgment and his damages, by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c.; and because the justices here will advise themselves of and upon the premises before they give judgment thereon, day therefore is given to the parties aforesaid here until on the octave of St. Hilary, to hear their judgment thereon, because the same justices here thereof not yet, &c. on which day here comes as well the said Silas as the said W. by their attornies aforesaid; and hereupon the premises being seen, and by the

Judgment for
the plaintiff.

Inquiry award-
ed.

the justices here more fully understood, it seems to the said justices here, that the said plea of the said Silas above in rejoining pleaded, and the matter in the same contained, is sufficient in law to preclude him the said W. from having his avowry and cognizance aforesaid, as the said Silas hath above alledged; wherefore the said Silas ought to recover his damages against the said W. by reason of the taking and unjust detention of the cattle aforesaid; but it is unknown what damages the said Silas hath sustained by reason of the taking and unjust detention of the cattle aforesaid, as for his costs and charges by him about his suit in this behalf sustained, by reason of the taking and unjust detention of the cattle aforesaid, the sheriff is commanded that by the oath of good and lawful men of the county aforesaid, he diligently enquire what damages the said Silas has sustained, as well by reason of the taking and unjust detention of the cattle aforesaid, as for his costs and charges by him about his suit in this behalf sustained, and the inquisition which he shall thereof make, he certify there from the day of Easter in fifteen days, under the seal, &c. on which day here comes the said Silas, by his attorney aforesaid; and the sheriff, to wit, Joseph Edmunds, esquire, hath now returned here a certain inquisition taken before him at Stevenage, in the county aforesaid, on the fifteenth day of April last past, by the oath of twelve, &c. whereby it is found that the said Silas has sustained damage by reason of the taking and unjust detention of the cattle aforesaid, besides his costs and charges by him about his suit in this behalf expended to fourpence, and for those costs and charges to sixpence; therefore it is considered, that the said Silas do recover against the said William his damages aforesaid to tenpence, by the inquisition aforesaid in form aforesaid found, and also nine pounds five shillings and twopence to the same Silas at his request, for his costs and charges aforesaid by the court here by increase adjudged; which said damages in the whole amount to nine pounds six shillings; and the said William, in mercy, &c.

This judgment was affirmed on a writ of error.

Avowry as bailiffs, that they took the plaintiff's gelding for an amercement for the court leet for the city of Carlisle, upon a presentment the plaintiff used a false measure, setting out the jurisdiction of the corporation for that purpose at large.

AND the said John, Robert Nanson, and Joseph, by A. B. their attorney, come and defend the wrong and injury, when, &c. and as bailiffs of the mayor, aldermen, bailiffs, and citizens of the city of Carlisle, in the county of Cumberland, well acknowledge the taking of the said gelding in the said place in which, &c. and justly, &c.; because they say, that the city of Carlisle aforesaid, in the county of C. aforesaid, at the said time when, &c. was, and from time whereof the memory of man is not to the contrary, hath been and still is an ancient city, and that the said place in which, &c. now is, and at the said time when, &c. was, and from time whereof the memory of man is not to the contrary, hath been within the city of Carlisle, in the county aforesaid, and within the jurisdiction of the court leet and view of

of frankpledge hereinafter mentioned: And the said J. R. N. and Joseph further say, that the citizens of the said city, from time whereof the memory of man is not to the contrary, until the twenty-first day of July, in the thirteenth year of the reign of Charles the First, late king of England, &c. were an ancient corporation and body corporate in deed, fact, and name, and had been and were confirmed by divers letters-patent of divers late kings and queens of England, at divers times, by divers names of incorporation, to wit, by the name of the citizens of Carlisle, and also by the name of the mayor and citizens of the city of Carlisle; on which said twenty-first day of July, in the thirteenth year of the reign of the said Charles the First, late king of England, &c. the said citizens of the city of Carlisle were by the said late king, by his letters-patent bearing date at _____, on the same day and year last aforesaid (and which said letters-patent, sealed with the great seal of Great Britain, the said J. R. N. and Joseph now bring into court here) were duly incorporated by the name of the mayor, aldermen, and bailiffs of the city of Carlisle: And the said J. R. N. and Joseph further say, that the citizens of the said city of Carlisle for the time being, from time whereof the memory of man is not to the contrary, until the said twenty-first day of July, in the thirteenth year of the reign of the said late king Charles the First, by their several names first and secondly above mentioned respectively; and the said mayor, aldermen, bailiffs, and citizens of the said city of Carlisle continually from thenceforth hitherto have had, and have been used and accustomed to have, and of right ought to have had, and the said mayor, aldermen, bailiffs, and citizens of the said city still of right ought to have a certain court leet and view of frankpledge of all the inhabitants and residents within the said city once a year, to wit, within a month next after the feast of St. Michael the Archangel, before the mayor and bailiffs of the said city for the time being within the said city yearly to be held: And whereas there now is, and from time whereof the memory of man is not to the contrary, there hath been a certain ancient or laudable custom used and approved of within the said city, that whenever the said court leet hath been so yearly held as aforesaid, the said court, together with the presentments and proceedings therein depending and undetermined, have been, and have been used and accustomed to be, and of right ought to be adjourned by the mayor and bailiffs of the said city until Easter Monday then next following, before the mayor and bailiffs of the said city for the time being within the said city, to be further held: And the said J. R. N. and Joseph further say, that the said Robert Blamire, before the said time when, &c. and also before the holding of the court leet hereinafter mentioned, to wit, on, &c. at the parish of St. C. in the city of Carlisle, and within the jurisdiction of the said court, in a certain public market then and there held, knowingly, deceitfully, and unlawfully did use a certain false and deceitful measure, as and for a measure containing three bushels, according to the standard
of

of the exchequer, commonly called Winchester measure, in the selling of oats there to the liege subjects of our said lord the king, the said measure not containing, but being less than three bushels, according to the said standard measure, and the said Robert Blamire then and there well knowing the said deceit and oppression of the liege subjects of our said lord the king, against the form of the statute in such case made and provided, and against the peace of our lord the now king: And the said J. R. N. and Joseph further say, that afterwards, and before the said time when, &c. to wit, at the court leet and view of frankpledge of our sovereign lord the now king, holden by adjournment at the Guild-hall in and for the said city, and within the jurisdiction of the said court leet, on Easter Monday, the fourth day of April A. D. 1768, before the said J. P. esquire, then being mayor of the said city, and Robert Jackson; and the said J. R. N. then being bailiff of the said city, according to the custom there by the oath of twelve free and lawful men within the city aforesaid, resiant and inhabitant, and then being in the said court there, charged and sworn to enquire those things which to the court leet and view of frankpledge belonged, it was then and there in the same court presented (amongst other things) that the said R. B. had been guilty of using false measure in form aforesaid, to the common grievance of the king's subjects; whereupon it was then and there considered in and by the said court there, that the said R. B. should be in mercy, wherefore the said R. B. was then and there for that cause at the same court by the said jury amerced to the sum of thirty-nine shillings and elevenpence of lawful money of Great Britain, which said amercement by two assessors, to wit, R. H. and W. H. offerers in the same court then and there charged and sworn, was at the same court duly offered to the like sum of thirty-nine shillings and elevenpence; of all which said premises the said R. B. afterwards and before the said time when, &c. to wit, on, &c. in the said declaration mentioned, at, &c. had notice, and was then and there required by the said J. R. N. and Joseph, as bailiffs of the said mayor, aldermen, bailiffs, and citizens of the said city, to pay the said amercement, to do which the said R. B. then and there wholly refused; and because the said thirty-nine shillings and elevenpence for the said amercement at the said time when, &c. was so as aforesaid due, owing, and in arrear to the said mayor, aldermen, bailiffs, and citizens of the said city, and the said R. B. so refusing to pay the same as aforesaid, the said J. R. N. and Joseph, as the bailiffs of the said mayor, &c. well acknowledge the taking of the said gelding in the said place in which, &c. being within the said city and jurisdiction of the said court, and justly, &c. as and in the name of a distress for the said amercement so as aforesaid due and owing to the said mayor, &c. which said amercement still remains in arrear and unpaid, &c.

And

And the said R. B. as to the avowry and cognizance of the said J. R. N. and Joseph above made, saith, that by reason of any thing in the said avowry and cognizance contained, they ought not to avow the taking of the said gelding in the said declaration mentioned, in the said place in which, &c. as just; because protesting that the said avowry, and the matters therein contained, are not sufficient in law for the said J. R. N. and Joseph to acknowledge as bailiffs of the said mayor, aldermen, bailiffs, and citizens of the city of Carlisle, in the county of Cumberland, the taking the said gelding in the said plea in which, &c. as just; to which said cognizance, in manner and form as the same is above made, he the said R. B. is not under any necessity, nor in any way bound by the law of the realm to make any answer; protesting also, that there is not, nor ever was any such custom used and approved of in the said city of Carlisle, as the said J. R. N. and Joseph have above in and by the said cognizance alledged; for plea in bar in this behalf the said R. B. says, that true it is that the said city of Carlisle, in the county of Cumberland aforesaid, at the said time when, &c. and from time whereof the memory of man is not to the contrary, hath been and still is an ancient city, and that the said place in which, &c. now is, and at the said time when, &c. and from time whereof the memory of man is not to the contrary, hath been within the city of C. aforesaid, in the county aforesaid, and within the jurisdiction of the court leet and view of frankpledge mentioned in the said cognizance; and that the citizens of the said city, from time whereof, &c. until the twenty-first day of July, in the thirteenth year of the reign of Charles the First, late king of England, &c. were an ancient corporation and body corporate in deed, fact, and name, and had been and were confirmed by divers letters-patent of divers late kings and queens of England, at divers times, by divers names of incorporation, to wit, by the name of citizens of the city of C. and also by the name of the mayor and citizens of the said city; on which said twenty-first day of July, in the said thirteenth year of the reign of the said Charles the First, late king of England, &c. the said citizens of the said city of C. by the said late king, by his said letters-patent mentioned in the said cognizance were duly incorporated by the name of the mayor, aldermen, bailiffs, and citizens of the city of Carlisle aforesaid, and that the said citizens of the said city of Carlisle for the time being, from time whereof, &c. until the twenty-first day of, &c. in the thirteenth, &c. by their several names first and secondly above-mentioned respectively; and the mayor, aldermen, bailiffs, and citizens of the said city of C. continually from thenceforth hitherto have had, and have used and been accustomed to have, and of right ought to have had, and the said mayor, &c. still of right ought to have a certain court leet or view of frankpledge, and all things which to a court leet or view of frankpledge belong of all the inhabitants and residents within the said city once every year, within one month next after the feast of St. Michael the Archangel,

Plea in bar to the last avowry, protesting against the sufficiency of it, and the custom admitting the existence of the corporation, but saying that they took the horse *de injuria*, and without the residue of the cause alledged.

COGNIZANCE FOR AN AMERCIAMENT.

angel, before the mayor and bailiffs of the said city for the time being within the said city yearly to be held, as the said J. R. N. and Joseph have above in their said cognizance alledged; but the said R. B. further says, that the said J. R. N. and Joseph, at the said time when, &c. of their own wrong, and without the residue of the cause by them above alledged, took the said gelding in the said declaration mentioned in the said place in which, &c. and unjustly detained the same against sureties and pledges until, &c. in manner and form as the said R. B. hath above complained against them; and this, &c.; wherefore inasmuch as the said J. R. N. and Joseph have above acknowledged the taking of the said gelding in the said declaration mentioned, in the said place in which, &c. above done, he the said R. B. prays judgment and his damages, &c.

Cognizance as
bailiffs (for tak-
ing six pewter
dishes) as a di-
rects for an a-
merciament,
&c.

AND the said J. Collinson, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the taking of six pewter dishes, parcel of the said ten pewter dishes in the said declaration mentioned, saith, that he did not take those pewter dishes as the said E. above complains against him; and of this he puts himself upon the country, and the said E. doth the like: And as to the taking of four pewter dishes, residue of the said ten pewter dishes, the aforesaid J. E. as bailiff of T. S. esquire, well acknowledges the taking of the said pewter dishes in the said place in which, &c. and justly, &c.; because he says, that the said place in which, &c. is, and at the said time when, &c. was a certain messuage, with the appurtenances, in the manor of S. in the parish and county aforesaid; and that the said J. S. long before, and at the said time when, &c. was and still is seised of and in the said manor, with the appurtenances, in his demesne as of fee, within which said manor there are, and from time, &c. there hath been a large waste or common called B. Common, parcel of the same manor, and also as well several customary messuages and tenements demised and demiseable by the lord of the same manor for the time being, at the will of the lord, according to the custom of the same manor, by copy of the rolls of the court of the said manor, as divers freehold messuages and tenements held of the same manor by several rents and services, parcel of the same manor; and the several tenants of the said freehold messuages and tenements, together with the respective tenants of the said customary messuages and tenements, and by custom therein for all the time aforesaid made and approved, have had and have used, and been accustomed to have common of Turbury in the said waste or common to be had and taken every year at reasonable times for their necessary fuel, to be burned in their messuages, and for all the time aforesaid have dug, and have used to dig peat pots there, for taking of peat out of those peat pots for their necessary fuel to be burned in those messuages: And the said defendants further say, that within the said manor there is, and from time
whereof,

whereof, &c. hath been a certain ancient and laudable custom there used and approved, to wit, that every person so digging peat pots in the said waste or common for the purpose aforesaid, hath used and been accustomed well and sufficiently to bed his peat pots there, and to let out the water from thence, and if any person hath neglected well and sufficiently to bed his peat pot there, and to let out the water from thence, then every person so offending in the premises hath been amerced, and hath been accustomed to be amerced by the court baron of the said manor, by the homage of the court for such his offence and default, for which said amercement being assented by the assessor of that court for the time being, the aforesaid J. S. and all those whose estate he hath, and at the said time when, &c. had of and in the said manor, with the appurtenances, for the whole time aforesaid, by their bailiff of the said manor for the time being, have used and been accustomed to distrain any goods and chattels of such persons so offending found within the said manor; and the said goods and chattels so distrained within the same manor to impound, until the lord of the said manor for the time being hath been fully satisfied for such amercement: And the said defendants further saith, that the said E. at the said time when, &c. and for the space of one year past and more, was and still is tenant of a certain ancient freehold messuage and tenement, with the appurtenances, situate, lying, and being within the manor aforesaid, and by reason thereof having common of Turbary within the aforesaid waste or common, for taking of peat out of those peat pots for his necessary fuel to be burned in his said messuage, but did not well and sufficiently bed his said peat pots there, nor let out the said water from thence, but neglected so to do; thereupon afterwards, at the court baron of the said J. S. of his manor aforesaid held in and for that manor at S. aforesaid, on the twenty-third of October in the year aforesaid, by the homage of that court, to wit, by the oath of M. T. &c. [the names of the homage] then and there being sworn and charged to enquire of all articles enquireable at that court, it was presented that the said E. had not well and sufficiently bedded his peat pots, and let out the water thereof, for which said offence the said E. according to the custom aforesaid, was by the said homage then and there concerned to three shillings and fourpence; which said amercement was by R. H. and J. W. then assessors of the said court thereto thence and there duly elected and sworn, assented; and confirmed to the said three quarters, whereof the said E. afterwards, to wit, on the same day and year last-mentioned, had notice, &c. at S. aforesaid, and was then and there required by the said defendant, then bailiff of the said J. C. of his manor, to pay to the said J. S. aforesaid three shillings and fourpence for the amercement aforesaid, which the said E. then and there refused to pay to the said J. S.; and because the said amercement of three shillings and fourpence at the said time when, &c. was in arrear and unpaid to the said J. S. the aforesaid defendant, as bailiff of the said J. S. of his manor aforesaid, by command of the said J. S. well acknowledges the taking of

11. Rep. 45.
Cro. Jac. 342.
Ld. Raym. 71.

the said four pewter dishes, residue of the said ten pewter dishes the said declaration mentioned in the aforesaid messuage in which, &c. being within the said manor, and justly, &c. for and in the name of a distress for the said three shillings and fourpence of the amercement aforesaid, so being in arrear and unpaid, &c.; and this, &c.; wherefore, &c. E. BOOTLE.

Plea in bar, that defendant *de injuria*, &c.

And the said Edward, as to the said cognizance, &c. says, that the said defendant ought not to acknowledge, &c. because protesting that cognizance, &c. are insufficient; says, that defendant took the said four pewter dishes of his own wrong *modo et forma in declaration*; without this [traverse of the custom alledged to be the peat pots, and the amercement for the neglect] *modo et forma*, &c.; and this, &c.; wherefore, &c. [2d Plea, *de injuria*, and traverse of the premises to distrain; 3d Plea, that defendant ought not to acknowledge, &c. because he says, that he did bed, &c. and let out water, &c.]; and this he prays may be enquired of by the county, &c.

AVOWRIES, &c. UNDER JUDGMENTS.

Avowry by lessee of tenant, by *elegit*, for damage feasant.

Judgment.

Seisin.

MOORE } AND the said W. by G. L. his attorney, comes
against } and defends the force and injury, when, &c. and well
DREWRY. } avows the taking of the cattle aforesaid, in the said
place in which, &c. and justly, &c.; because he says, that the same places in which the taking of the cattle aforesaid is supposed to be contain at the said time when the taking of those cattle is supposed to be, and did contain in themselves together ninety acres of pasture, with the appurtenances, in Market Stanton aforesaid; and that long before the said time when, &c. to wit, in Michaelmas term, in the fourteenth year of the reign of the lord Charles the Second, late king of England, &c. the said Gabriel Leech, in the court of the same late king, before the said late king himself, (the same court then being at Westminster, in the county of Middlesex), by the consideration of the same court, recovered against one William Leech, gentleman, one thousand one hundred pounds debt, and twenty-one shillings for his damages which he had sustained, as well by reason of the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the said William Leech is convicted, as by the record and proceedings thereof in the court of the lord the now king, before the king himself here; to wit, at Westminster aforesaid remaining more fully is manifest and appears: And the said W. Drewry further says, that after the rendition of that judgment, to wit, on the twenty-second of January, in the third year of the reign of the lord James the Second, late king of England, &c. the said W. Leech was seised of the said places in which, &c.
among

among others, in his demesne as of freehold, for the term of his life; and being so thereof seised, and the same judgment being in its full force and strength, not paid or satisfied, it was in such manner thereon proceeded, that afterwards, to wit, in Hilary term, in the third and fourth year of the reign of the said late king James the Second, in the court of the same late king, before the late king himself, it was considered by the same court then here, to wit, at Westminster aforesaid, that the said Gabriel should have execution against the said W. Leech for the debt and damages aforesaid, by the default of him the said W. Leech, as by the record and proceedings thereof in the court here remaining, more fully is manifest and appears; and afterwards, to wit, on the fourth day of July, in the fourth year of the reign of the said late king James the Second aforesaid, in the court of the said late king, before the late king himself then here, to wit, at Westminster aforesaid, came the said Gabriel in his proper person, and by the statute in such case lately made and provided, chose to be delivered to him all the goods and chattels of the said W. Leech, except his oxen and beasts of his plough, and also the one half of all the lands and tenements of the said W. Leech, to hold to himself the goods and chattels aforesaid, as his own proper goods and chattels, and also to hold one half aforesaid as his freehold to him and his assigns, according to the form of the statute aforesaid, until he should thereout fully levy the debt and damages aforesaid; wherefore the sheriff of the county of Lincoln was then and there by the same court commanded, that he the said sheriff all the goods and chattels of the said W. Leech, except his oxen and beasts of his plough, and also the one half of all the lands and tenements of the same William Leech in his bailiwick, of which the same W. Leech, at the said time of the rendition of the principal judgment aforesaid, or ever after was seised in his bailiwick, should without delay cause to be delivered to the said Gabriel by a reasonable price and extent, to hold to himself the goods and chattels aforesaid as his own proper goods and chattels, and also the one half of the lands and tenements aforesaid, as his freehold to him and his assigns, according to the form of the statute aforesaid, until he should thereout levy the debt and damages aforesaid, and how the same sheriff should execute that writ he should certify to the same late king James the Second here, to wit, at Westminster aforesaid, on Saturday next after the octave of St. Martin then next ensuing, under the seal, &c. and the seals of them by whose oath he should make that extent and appraisement, then and there remitting that writ to the same late king; on which day, before the late king himself here, to wit, at Westminster aforesaid, came the said Gabriel in his own proper person, and the then sheriff of Lincoln, to wit, Anthony Eyre, esquire, to the same court then here, returned a certain inquisition before him at L. in the same county of Lincoln, on the fifteenth day of November, in the fourth year of the reign of the late king James the Second, by the oath of twelve good and lawful men of that county taken, whereby it is found, that the said W. Leech, after the ren-

Execution a-
warded on a
scire facias,

Elegit prayed.

13. Eliz. 1. c. 18.

The inquisition
returned.

A moiety de-
livered.

Entry of tenant
by elegit and de-
mise to the a-
vowant.

Distress.

dition of the principal judgment aforesaid, was seised of and in a certain close of land called the Low Pasture, and also of and in the said places in which, &c. likewise called the Low Pasture and Colehill, containing together by estimation one hundred and forty-six acres, the said close called the Low Pasture being one hundred and twenty acres, parcel thereof, of the clear yearly value in all issues, besides reprises, forty-eight pounds, and of and in a close, &c. and that those premises are situate, lying, and being in Market Stanton aforesaid, and of and in a yearly rent of ten pounds, issuing out of and from certain lands in Sutton in the Marsh, in the county aforesaid, then in the tenure or occupation of one R. V. or his assigns, and also of and in a yearly rent of thirty pounds, issuing out of and from certain lands in F. in the county aforesaid, then in the tenure and occupation of R. C. or his assigns, in his demesne as of freehold for the term of his life; and that the said places in which, &c. and the said close called C. and twenty pounds of the said thirty pounds, issuing out of and from the said lands in F. were a true and equal half of all and singular the lands and tenements aforesaid; and that the same sheriff the same half aforesaid, on the day of the caption of the inquisition aforesaid, to the said Gabriel Leech, by a reasonable price and extent had, caused to be delivered, to hold to him and his assigns as his freehold, according to the form of the statute aforesaid, until he should thereout fully levy the debt and damages aforesaid, as that writ commanded and required: And by the inquisition aforesaid it was further found, that the same W. Leech, at the time of the rendition of the principal judgment aforesaid had not, nor on the day of the caption of the inquisition aforesaid had any goods or chattels, or any other lands or tenements in the county aforesaid, to the knowledge of the jurors of that inquisition, as by the record and proceedings thereof in the court of the lord the now king, before the king himself, remaining, more fully is manifest and appears; whereby the said Gabriel into the said places in which, &c. with the appurtenances, among others, entered and was thereof possessed; and being so thereof possessed, the same Gabriel afterwards, and before the said time when, &c. to wit, on the second day of May, in the year of the Lord 1695, at M. S. aforesaid, demised and to farm let to the said William Drewry, the said places in which, &c. with the appurtenances, among others, to have and to hold to the said William Drewry, from the first day of the same month of May unto the end and term of one year thence next ensuing and fully to be complete and ended; by virtue of which demise the same William Drewry, into the said place in which, &c. with the appurtenances, &c. among others, entered and was thereof possessed until the end and expiration of that term: And because the cattle aforesaid, at the said time when, &c. were in the said place in which, &c. to wit, two rams, one hundred wether sheep, and one hundred ewe sheep, parcel thereof, being in the said place called L. and eighteen wether sheep, and thirty ewe sheep, the residue thereof, being in the said place called C. eating up the grass there then growing, and doing damage there,

there, the same William Drewry well avows the taking of the cattle aforesaid in the said places in which, &c. and justly, &c. so doing damage there; with this, that the said William Drewry will verify that the said William Leech is yet surviving and in full life, to wit, at M. S. aforesaid, and that the debt and damages aforesaid to the said W. L. are yet unsatisfied, &c.

WILLIS } **KENT**, to wit. Thomas Willis, baronet, lately in Count on a re-
against } the county court of A. B. esquire, sheriff of the county *cordari facias*,
DEN. } aforesaid, held at Maidstone in the county aforesaid, in order to have
 complained against C. D. in a plea of trespass; which said plea, at *colts*, where the
 the petition of the said T. W. was brought here at this day, to wit, *40s.*
 from the day of the Holy Triniy, &c. by the writ of the lord the *22. & 23 C. 2.*
 king of *recordari facias loquelam*; and now on this day come as well *Rat. Ent 570.*
 the said T. W. by S. K. his attorney, as the said C. D. by E. F. his *1. Brownl. 187.*
 attorney; and hereupon the said T. W. by his attorney aforesaid,
 complains that, &c.

If the defendant in the Count pleads freehold, and the plaintiff removes the plaint without cause shewn in the end of the writ, and the plaint only is returned, and not the plea, (which is necessary to be done, because the court ought not to take cognizance of a plea under forty shillings, *Querry*, How to declare? 'To wit, which said plaint at the petition of the said plaintiff, because the defendant in that plaint in the county court aforesaid claimed freehold, is brought here, &c."

Lambert and Thurston, . r. W. & M. Trespass *quare clausum fregit* was removed by *recordari*, where the plaintiff declared to his damage thirty shillings. Defendant demurred because the court had not jurisdiction of the cause where damages are under forty shillings. And it was urged for the plaintiff, that the plaintiff had removed this cause, because the defendant had pleaded freehold, and so it is not triable in the county court. *Co. Lit. 118. and 2. Inst.*



AVOWRIES, &c. FOR RENTS, SERVICES, AND CUSTOMS.

GEORGE the Third, &c. To the Sheriff of Kent, greeting: Writ of enquiry Whereas P. J. was summoned to be in our court before us, to answer J. G. of a plea wherefore he took the cattle, goods, and chattels of him the said J. G. and them unjustly detained against sureties and pledges; and whereupon the said J. G. by A. B. his attorney, complained that the said P. J. on, &c. at, &c. in, &c. in a certain place there called New Cross, seized and took the cattle, goods, and chattels of the said J. G. to wit, &c. [set out the goods] there then found, of the value of two hundred pounds, and them unjustly detained against sureties and pledges, &c.; whereupon the said John saith that he was injured, and had sustained damage to the value of two hundred pounds; and therefore he brought his suit, &c.

H 3

And

Cognizance as
bailiff of the
corporation of
the city of Lon-
don, the gover-
nors of Bride-
well and St.
Thomas's Hof-
pitals, for rent
in arrear under a
demise by them
to the plaintiff,
(to pay quarter-
ly—

And thereupon the said P. J. by A. B. his attorney, comes and defends the wrong and injury, when, &c. and for cognizance in this behalf he the said P. J. as bailiff of the mayor, commonalty, and citizens of the city of London, governors of the possessions, revenues, and goods of the hospitals of Edward the Sixth, king of England, of Christ, Bridewell, and St. Thomas the Apostle, well acknowledges the taking of the said cattle, goods, and chattels, in the said declaration mentioned, in the said place in which, &c. and justly, &c. ; because he says, that he took the said cattle, goods, and chattels, at the said time when, &c. in and upon a certain messuage, and in and upon certain lands and premises, situate, lying, and being at the said place called New Cross, in the said declaration mentioned, and in which the said cattle, goods, and chattels were thereby alledged to have been taken, and that the said J. G. continually for a long space of time, to wit, for one year and an half next before and ending and ended on the feast day of , A.D. 1785, and from thence until and at the said time when, &c. enjoyed the said messuage, lands, and premises in which, &c. (*amongst other tenements*), with the appurtenances, as tenant thereof to the said mayor, commonalty, and citizens, governors aforesaid, by virtue of a certain demise thereof by them theretofore made, at the yearly rent of seventy-five pounds, payable quarterly, that is to say, the feast of, &c. &c. &c. by even and equal portions, *and during all that time held the same as tenant thereof to the said mayor, commonalty, and citizens, governors aforesaid*, and that because one hundred and twelve pounds ten shillings of the said rent for one year and the half of another year of the said demise, ending and ended on the said feast day of , in the year 1785, on that day, and from thence until and at the said time when, &c. was in arrear and unpaid to the said mayor, commonalty, and citizens, governors aforesaid, he the said P. J. as bailiff of the said mayor, &c. well acknowledged the taking of the said cattle, goods, and chattels in, on, and upon the said messuage or dwelling-house, lands, and premises, at and in the said place in which, &c. called New Cross, and justly, &c. for and in the name of a distress for the said rent so due, in arrear, and unpaid to the said mayor, &c. which said rent then remained due and unpaid to them ; and this, &c. ; wherefore, &c. and a return of the said cattle, goods, and chattels, together with his damages, costs, and charges, according to the form of the statute in such case made and provided, to be adjudged to him, &c. : And for further cognizance, &c. [like the preceeding one, only making *M. B.* tenant instead of the plaintiff, and omitting the words in Italic. A third cognizance, differing from the first only by defendant's stating himself to be a bailiff to M. B. instead of the governors ; then followed a general demurrer to the cognizance ; joinder in demurrer, and continuance to the day mentioned in the rule for a *concilium*.] On which day, before us at Westminster, came the parties aforesaid, by their attornies aforesaid, whereupon all and singular the premises being seen, and by our said court before us fully understood, and mature deliberation being thereon had

2d Cognizance,
for rent in ar-
rear under a de-
mise by them to
another person.

Judgment, that
the cognizance
was good.

had, it was considered that the cognizance of him the said P. J. by him above made in manner and form as the same was above made, and the matters therein contained, were sufficient in law for him the said P. J. to acknowledge the taking of the said cattle, goods, and chattels in the said place in which, &c. to be just as appears to us of record: And whereas the said P. J. hath prayed our writ to enquire of the sum in arrear of the rent aforesaid, and the value of the distress aforesaid to be granted to him, according to the form of the statute in such case made and provided; therefore we command you, that according to the form of the statute in such made and provided, by the oath of twelve good and lawful men of your county, you diligently enquire how much of the yearly rent aforesaid, at the said time of taking and distraining of the cattle, goods, and chattels aforesaid, was in arrear and unpaid, and how much the cattle, goods, and chattels aforesaid, so as aforesaid taken and distrained, were worth, according to the true value of the same; and the inquisition which you shall thereupon take you send to us in five weeks from the day of Easter wheresoever we shall then be in England, under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness, &c.

Writ to enquire how much rent in arrear, and the value of the distress.

I am of opinion that the within writ of enquiry will operate as a *superfedeas* to a *retorno habendo*, and consequently preclude the avowant from proceeding against the bail; for they are only liable upon the default of the plaintiff making a *rate* of the *specific goods* distrained upon, which he is not bound to do, the avowant having elected to proceed under the statute 18. Cha. 2. c. 7. and not at common law, by which he would be entitled to the writ of *retorno habendo*, and upon return of *elargatus* be in a situation to proceed against the bail; but under the statute the judgment is to recover the value of the goods distrained against the plaintiff himself by either of the common processes of execution, and therefore he is entitled to take the goods notwithstanding the awarding of *retorno habendo*, according to the doctrine laid down in *Cooper v. Sherbrooke*, 2. Will. 117. and the reasoning in *Pratt v. Hutledge*, 1 Salk. 95. where a writ of second deliverance is held not to be a *superfedeas* to an enquiry under the statute 21. Hen. 8. c. 19. because the damages assessed by such enquiry were

not the damages avowed, but merely such as the avowant has sustained by the expence and trouble attending the making of the distress, and its being withheld from him; but the assessment, made by the enquiry in the present case, is of the very thing avowed for, and the avowant has a judgment against the party to recover the value of it, and therefore it seems but reasonable that the goods should be retained by him.

As to any deficiency in the value of them, the 4th section of the statute under which the proceedings have been had provide for the case by giving a right to make a second distress for such deficiency.

Notwithstanding what is above observed, it may be worth while in case there be no chance of obtaining the rent from the principal, to risk entering up the judgment as at common law, without taking any notice of the enquiry, and then to issue a *retorno habendo* to warrant future proceedings against the bail if they are responsible persons.

V. LAWES.

DECLARATION in replevin, for seizing a quantity of hay, one waggon, several vessels with some cyder in them, and five sheep.

And the said Thomas and John, by A. B. their attorney, come and defend the force and injury, when, &c. and the said Thomas

Avowry and cognizance, for rent in arrear, on demise.

in his own right well avows, and the said John, as bailiff of the said Thomas, well acknowledges the taking of the said cattle, goods, and chattels, in the said place in which, &c. and justly, &c.; because they say, that the said plaintiff continually from and after the feast of the birth of Our Lord Christ, A. D. 1773, until and at the said time when, &c. enjoyed the said places in which, &c. and during all that time held the same, together with other premises of the said Thomas, as his tenant thereof, by virtue of and under a demise thereof to him made by the said Thomas, at the yearly rent of fifty-two pounds, payable at the feast of, &c. by even and equal portions; and because twenty-six pounds of the rent aforesaid, due and payable by the said plaintiff to the said defendant for half a year, ending on the feast of, &c. A. D. 1774, at that feast in that year, and also at the time of the taking of the said cattle, goods, and chattels, were due, in arrear, and unpaid to the said Thomas, he the said Thomas in his own right well avows, and the said John, as bailiff of the said Thomas, well acknowledges the taking of the said cattle, goods, and chattels, in the said places in which, &c. and justly, &c. for and in the name of a distress for the said rent so due, in arrear, and unpaid to the said Thomas as aforesaid; and the said rent still remains due and unpaid; and this, &c.; wherefore, &c. and a return of the cattle, goods, and chattels, together with their damages, costs, and charges in this behalf, according to the form of the statute in that case made and provided, to be adjudged to them, &c.

W. BALDWIN.

Plea in bar, that plaintiff, after the said rent became due, and before the taking of the distress, tendered the rent.

And the said plaintiff, as to the said avowry and cognizance of the said defendants by them above made, says, by reason of any thing therein contained, the said Thomas in his own right ought not to avow, and the said John, as bailiff of the said Thomas, ought not to acknowledge the taking of the said cattle, goods, and chattels, in the said place in which, &c. to be just; because the said plaintiff saith, that he the said plaintiff, after the said feast of, &c. A. D. 1774, and before the taking of the said cattle, goods, and chattels, in the said place in which, &c. to wit, on, &c. at, &c. tendered and offered to pay unto the said Thomas the said sum of twenty-six pounds of the rent aforesaid, which sum of twenty-six pounds, he the said Thomas then and there refused to receive and accept: And the said plaintiff further saith, that he the said plaintiff always from the said twenty-sixth of December until the time of taking the said distress, hath been ready and willing to pay to the said Thomas the said sum of twenty-six pounds, to wit, at, &c. and that before the time of taking the said distress no request or demand was made by the said Thomas, or any other person on his behalf of the said rent or any part thereof, of him the said plaintiff; and this he is ready to verify; wherefore inasmuch as the said Thomas in his own right hath above avowed, and the said John, as bailiff of the said Thomas, hath above acknowledged, the taking of the said cattle, goods, and chattels, in the said place in which, &c. he the said plaintiff prays judgment and his damages, by

by reason of the taking and unjust detaining thereof, to be adjudged to him, &c.

F. BULLER.

And the said defendants say, that they, by reason of any thing by the said plaintiff above in pleading alledged, ought not to be barred from avowing and acknowledging the taking of the said cattle, goods, and chattles, in the said place in which, &c. to be just; because they say, that the said plaintiff did not tender and offer to pay to the said Thomas the said sum of twenty six pounds of the rent aforesaid, in manner and form as the said plaintiff hath above in pleading alledged; and of this they put themselves upon the country.

Replication,
taking issue on
the tender.

Michaelmas Term, 21. Geo. III.

DECLARATION in replevin for taking household furniture.

And the said Charles, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and well avows the taking of the said goods and chattels in the said declaration mentioned, in the said dwelling-house in which, &c.; because he says, that the said Richard, for one whole year next before and ending on the twenty-fifth of March 1780, and from thence until and at the said time when, &c. held and enjoyed the said dwelling-house in which, &c. with the appurtenances, as tenant thereof to the said Charles under a demise thereof theretofore made by the said Charles to the said Richard, at the yearly rent of five shillings of lawful money of Great Britain; and because five shillings of the rent aforesaid, due and payable by the said Richard to the said Charles for the said one year ending on the twenty-fifth of March in the year aforesaid, on that day, in that year, and also at the said time when, &c. were in arrear and unpaid to the said Charles, he the said Charles well avows the taking of the said goods and chattels in the said declaration mentioned, in the said dwelling-house in which, &c. and justly, &c. for and in the name of a distress for the said rent so being due, in arrear, and unpaid to the said Charles as aforesaid; and this, &c.; wherefore, &c. and a return of the said goods and chattels, together with his damages, costs, and charges in this behalf, according to the form of the statute, to be adjudged to him, &c.

Avowry for
rent.

Drawn by MR. CROMPTON.

And the said Richard, as to the said avowry of the said Charles by him above made, says, that he, for any thing in the said avowry alledged, ought not to avow the taking the said goods and chattels in the said declaration mentioned, in the said place in which, &c. as just; because he says, that the said Charles, at the said time when, &c. of his own wrong took the said goods and chattels in the said place in which, &c. and unjustly detained the same against sureties and pledges until, &c. in manner and form as the

Plea in bar, *de injuria sua prop.*
and traverse of
the demise.

Traverse.

the said Richard hath above complained against the said Charles ; without this, that the said Richard, for one whole year next before and ending on the twenty-fifth of March 1780, and from thence until and at the said time when, &c. held and enjoyed the said dwelling-house in which, &c. with the appurtenances, as tenant thereof to the said Charles, under a demise thereof thentofore made by the said Charles to the said Richard, at the yearly rent of five shillings of, &c. in manner and form as the said Charles hath in the said avowry alledged; and this, &c.; wherefore inasmuch as the said Charles hath above acknowledged the taking of the said goods and chattels in the said place in which, &c. he the said Richard prays judgment, and a return of the said goods and chattels, together with his damages by reason of the taking and unjustly detaining thereof, to be adjudged to him.

THO. WALKER.

*Replication,
taking issue on
traverse.*

And the said Charles, as to the said plea of the said Richard by him above pleaded in bar to the said avowry of the said Charles by him made, says, that the said Charles, by any thing in that plea alledged, ought not to be barred from having and maintaining his said avowry; because he the said Charles, as before, says, that the said Richard, during the time in the said avowry mentioned, held and enjoyed the said dwelling-house in which, &c. with the appurtenances, as tenant thereof to the said Charles under a demise thereof made to the said Richard at and under the said yearly rent payable as in the said avowry is mentioned; and of this the said Charles puts himself upon the country, &c.

Drawn by MR. CROMPTON.

DECLARATION in replevin, for taking goods and chattels.

*1st avowry, for
four year's rent
of locus in quo
from one J. W.
who was defend-
ant's tenant;
2d avowry, for
four year's rent
in arrear from
J. W. before he
became a bank-
rupt, and from
plaintiff-as his
assignees after his
bankruptcy.*

And the said Charles Smith, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and well avows the taking of the said goods and chattels in the said place in which, &c. and justly, &c.; because he says, that one James Wilson, continually from and after the feast of the Annunciation of the Blessed Virgin Mary, in the year of Our Lord 1774, until and upon the feast of St. Michael the Archangel 1778, and from thence until and at the said time when, &c. enjoyed a certain messuage, with the appurtenances, in Mill-street, in the parish of St. George, Hanover-square, in the said county of Middlesex, being in the said place in which, &c. and during all that time was tenant thereof to the said Charles under and by virtue of a certain demise to him the said James Wilson thereof made by the said Charles, at and under the yearly rent of sixty pounds payable half-yearly at the feast of St. Michael and the Annunciation of the Blessed Virgin Mary in each and every year during that time, by even and equal portions; and because two hundred and seventy pounds of the rent aforesaid for four years and the half of a year, commenc-

ing

ing on the said feast of the Blessed Virgin Mary 1774, and ending on the feast of St. Michael the Archangel 1778, at that feast in the year last aforesaid, and also at the said time when, &c. were in arrear and unpaid from the said James Wilson to the said Charles, he the said Charles well avows the taking of the said goods and chattels in the said messuage, in the said place in which, &c. and justly, &c. as a distress for the said two hundred and seventy pounds of the rent aforesaid so then being in arrear and unpaid to the said Charles; and this, &c.; wherefore he prays judgment, and a return of the said goods and chattels, together with his damages, costs, and charges, according to the form of the statute, &c. to be adjudged to him, &c.: And for further avowry in this behalf, the said Charles, by leave, &c. well avows the taking of the said goods and chattels in the said place in which, &c. and justly, &c.; because he says, that one James Wilson, before he became a bankrupt, and afterwards, the said Bernard Holbrook and James Willett, assignees of the estate and effects of the said James Wilson, being a bankrupt respectively, from and after the feast of the Annunciation of the Blessed Virgin Mary 1774, until and upon the feast of St. Michael the Archangel in the year 1778, and from thence until and at the said time when, &c. enjoyed a certain messuage, with the appurtenances, in Mill-street, in the parish of St. George, Hanover square, in the said county of Middlesex, being the said place in which, &c. and during that time were tenants thereof respectively to the said Charles, under and by virtue of a certain demise thereof theretofore made by him the said Charles to him the said James Wilson, before he became a bankrupt, at the yearly rent of sixty pounds payable half yearly at the feast of St. Michael the Archangel and the Annunciation of the Blessed Virgin Mary by even and equal portions; and because two hundred and seventy pounds of the rent aforesaid for four years and a half of a year, commencing from the said feast of the Annunciation, &c. and ending on the feast of St. Michael the Archangel 1778, at that feast in the year last aforesaid, and also at the said time when, &c. were in arrear and unpaid to the said Charles, he the said Charles well avows the taking of the said goods and chattels in the said messuage, in the said place in which, &c. and justly, &c. as a distress for the said two hundred and seventy pounds of the rent last aforesaid, so being in arrear and unpaid as last aforesaid, and which said last-mentioned rent still is in arrear and unpaid to the said Charles; and this, &c.; wherefore, &c.

GEO. WOOD.

And the said Bernard and James Willett say, that the said Charles, by reason of any thing by him in his said first avowry above alledged, ought not to avow the taking of the said goods and chattels in the said place in which, &c. to be just; because they say, that the said Charles, at the said time when, &c. of his own wrong, took the said goods and chattels in the said place in which, &c. and unjustly detained the same against gages and pledges

Plea in bar to the first avowry *de injuria sua*, and traverse of J. W.'s enjoying the premises. To ad avowry, *de injuria sua*, and a like traverse.

pledges until, &c. in manner and form as the said Bernard and James Willett have above thereof complained against him; without this, that the said James Wilson in the said first avowry mentioned, during the said time in the said first avowry mentioned, until and at the same time when, &c. enjoyed the said messuage, with the appurtenances, in the said place in which, &c. as tenant thereof to the said Charles, at and under the said yearly rent of sixty pounds, payable as in the first avowry is mentioned, as the said Charles hath in his said first avowry above alledged; and this they the said Bernard and James are ready to verify; wherefore inasmuch as the said Charles hath above avowed the taking of the said goods and chattels in the said place in which, &c. they the said Bernard and James pray judgment and their damages, by reason of the unjust taking and detaining thereof, to be adjudged to them, &c. And the said Bernard and James, as to the said avowry by the said Charles secondly above made, say, that the said Charles, by reason of any thing in that plea alledged, ought not to avow the taking of the said goods and chattels in the said place in which, &c. to be just; because they say, that the said Charles, at the said time when, &c. of his own wrong took the said goods and chattels in the said place in which, &c. and unjustly detained the same against sureties and pledges until, &c. in manner and form as the said Bernard and James have above thereof complained against him; without this, that the said James Wilson, before he became a bankrupt, and afterwards, the said Bernard and James Willett, as assignees aforesaid during the said time in the said second avowry mentioned until and at the said time when, &c. respectively enjoyed the said messuage, with the appurtenances, in the said place in which, &c. at and under the said yearly rent of sixty pounds, payable as in the said second avowry is mentioned, as the said Charles hath in that avowry alledged; wherefore inasmuch as the said Charles hath above avowed the taking of the said goods and chattels in the said place in which, &c. they the said Bernard and James pray judgment and their damages, by reason of the unjust taking and detaining thereof, to be adjudged to them, &c.

THO. WALKER.

Replication, if
sue on traverse.

And the said Charles, as to the said plea of the said Bernard and James by them above made to the said first avowry of the said Charles as before, says, that the said James Wilson in the said first avowry mentioned, during the said time in the said first avowry mentioned, until and at the said time when, &c. enjoyed the said messuage, with the appurtenances, in the said place in which, &c. as tenant thereof to the said Charles, at and under the said yearly rent of sixty pounds, payable as in the said first avowry is mentioned, as the said Charles hath in his said avowry above alledged; and of this the said Charles puts himself upon the country, &c. and the said Bernard and James do so likewise: And the said Charles, as to the said plea of the said Bernard and James by them above made to the said second avowry of the said Charles as before, says, that the said James Wilson, before he became a bankrupt,

bankrupt, and afterwards, the said Bernard and James Willet, as assignees as aforesaid during the said time in the said second avowry mentioned, until and at the said time when, &c. respectively enjoyed the said messuage, with the appurtenances, in the said place in which, &c. as tenants thereof respectively to the said Charles, at and under the said yearly rent of sixty pounds, payable as in the said second avowry is mentioned, as the said Charles hath in that avowry alledged; and of this the said Charles puts himself upon the country, &c. and the said Bernard and James Willett do so likewise, therefore, &c.

GEO. WOOD.

NORTHAMPTONSHIRE, to wit. John Shell was summoned to answer Elizabeth Harris in a plea, wherefore he took the cattle, goods, and chattels of the said Elizabeth, and them unjustly detained against pledges, &c.; and thereupon the said Elizabeth, by W. Jones her attorney, complains; for that the said John, on the twenty-sixth of March 1782, in the parish of Upper Beddington, in the said county of Northamptonshire, a certain farm of the said Elizabeth there took the cattle, goods, and chattels, to wit, the stone horse, four mares, two geldings, six colts, six fillies, twenty-three cows, one calf, twenty steers, twenty heifers, one hundred and eleven sheep, two ewes, two lambs, one sow, eight pigs, three porkers, four carts, one water-cart, six waggons, and three hundred cart loads of hay of the said Elizabeth, and them unjustly detained against sureties and pledges, until, &c. to the damage of the said Elizabeth of four hundred pounds; and therefore she brings suit, &c.

Declaration in replevin for seizing cattle, &c.

And the said John Shell, by Henry Bagshaw, his attorney, comes and defends the force and injury, when, &c. and as bailiff of the reverend Edward Montgomery well acknowledges the taking of the cattle, goods, and chattels, in the said place in which, &c. and justly, &c.; because he says, that the said Elizabeth Harris continually for one quarter of a year next before and ending on the twenty fifth of March 1782, and from thence until and at the said time when, &c. held and enjoyed the said farm in which, &c. with the appurtenances, as tenant thereof by virtue of and under a certain demise to her thereof made, at the yearly rent of two hundred and twenty-two pounds six shillings and sixpence, payable quarterly, if demanded, by even and equal portions, which said rent was payable to the said Edward; and because fifty-five pounds eleven shillings and sevenpence halfpenny of the rent aforesaid, for one quarter of a year ending on the twenty-fifth of March 1782, on that day in that year, became due and in arrear from the said Elizabeth to the said Edward, and also at the said time of the taking of the said cattle, goods, and chattels, were and remained due, in arrear, and unpaid to the said Edward, he the said John, as bailiff of the said Edward, well acknowledges the taking of the said cattle, goods, and chattels in the said farm in which, &c. and justly, &c. after the same rent became

Cognizance for one quarter of a year's rent.

ad cognizance,
for an increased
rent of 5l. per
acre for every
acre ploughed
up, payable on
the same days as
the other rent.

came due, to wit, at the said time when, &c. and for and in the name of a distress for the said rent so due, in arrear, and unpaid to him the said Edward as aforesaid, which said rent still remains due, in arrear, and unpaid; and this, &c.; wherefore he prays judgment and a return of the said cattle, goods, and chattels, together with his damages, costs, and charges in and about his suit, according to the form of the statute in such case made and provided, to be adjudged to him, &c.: And for further cognizance in this behalf, he the said John, by leave, &c. as bailiff of the said Edward Montgomery, well acknowledges the taking of the said cattle, goods, and chattels, in the said place in which, &c.; and justly, &c.; because he says, that the said Elizabeth, continually for one year next before and ending on the twenty-fifth of March 1782, and from thence until and at the said time when, &c. held and enjoyed the said farm in which, &c. with the appurtenances, as tenant thereof to the said Edward, under and by virtue of a certain demise thereof made by the said Edward, at the yearly rent of two hundred and twenty-two pounds six shillings and sixpence, payable quarterly, if demanded, and at the further yearly rent of five pounds, payable to the said Edward for every acre of the said demised premises, being meadow or pasture land, except a certain part thereof called the Hill Allotment, which was deemed arable or convertible land, and which she the said Elizabeth should ear, dig, plough, or convert into tillage, without the express leave of the said Edward, his heirs, executors, or administrators, in writing first had and obtained, and so in proportion for any greater or lesser quantity than one acre, the first payment to be made on such of the said quarter-days as should next come after such coming, digging, ploughing, or converting into tillage; and because she the said Elizabeth, before the said twenty-fifth of March, being one of the quarter days on which the aforesaid rent of two hundred and twenty-two pounds six shillings and sixpence was reserved and became payable, to wit, on the first of January, in the year aforesaid, and on divers other days and times between that day and the said twenty-fifth of March, had eared, dug, ploughed, and converted into tillage, and caused to be eared, dug, ploughed, and converted into tillage divers, to wit, fifty-five acres and three quarters of another acre of the said demised premises, being meadow and pasture land, and not any part thereof belonging to the said Hill Allotment, without the leave of the said Edward Montgomery in writing or otherwise first had and obtained, by reason whereof two hundred and seventy-eight pounds fifteen shillings of the said last-mentioned rent, that is to say, five pounds for each and every of the said fifty-five acres and three quarters of another acre, on the said twenty-fifth of March, in the year aforesaid, became due and in arrear from the said Elizabeth to the said Edward, at the said time when, &c. were and remained due, in arrear, and unpaid to the said Edward, he the said John, as bailiff of the said Edward, well acknowledges the taking of said cattle, goods, and chattels, in

in the said place in which, &c. and justly, &c. after the said last-mentioned rent became due, in arrear, and unpaid to him the said Edward as aforesaid, which said last-mentioned rent still remains due, in arrear, and unpaid; and this, &c.; wherefore, &c.: And for a further cognizance in this behalf, he the said John, by leave, &c. and as bailiff of the said Edward Montgomery, well acknowledges the taking of the said goods and chattels in the said place in which, &c. and justly, &c.; because he says, that the said Elizabeth, continually for one quarter of a year next before and ending on the twenty-fifth of March 1782, and from thence until and at the said time when, &c. held and enjoyed the said farm in which, &c. with the appurtenances, as tenant thereof to the said Edward under and by virtue of a certain demise thereof made by the said Edward at the yearly rent of two hundred and twenty-two pounds six shillings and sixpence, payable to the said Edward quarterly, if demanded, by even and equal portions, and at the further yearly rent of five pounds, payable to the said Edward for every acre of the said demised premises last mentioned, being meadow or pasture land (except a certain part thereof called the Hill Allotment, which was deemed arable or convertible land) which she the said Elizabeth should ear, dig, plough, or convert into tillage without the express leave of the said Edward, his heirs, executors, or administrators, in writing first had and obtained, and so in proportion for any greater or lesser quantity than one acre, the first payment to be made on such of the said quarter days as should next come after such earing, digging, ploughing, or converting into tillage; and because fifty-five pounds eleven shillings and sevenpence halfpenny of the said rent in this cognizance first mentioned, for one quarter of a year ending on the twenty-fifth of March 1782, and also two hundred and seventy-eight pounds fifteen shillings for fifty-five acres and three quarters of an acre of the said demised premises last mentioned, which she the said Elizabeth, before the said twenty-fifth of March, being one of the quarter days on which the aforesaid rent of two hundred and twenty-two pounds six shillings and sixpence was reserved and made payable, to wit, on the first of January, in the year aforesaid, and on divers other days and times between that day and the said twenty-fifth of March, had eared, dug, ploughed, and converted into tillage, and caused to eared, dug, ploughed, and converted into tillage the said fifty-three acres and three quarters of an acre of the said demised premises last mentioned, being meadow or pasture land, and not any part thereof belonging to the said Hill Allotment, without the leave of the said ward in writing or otherwise first had or obtained, making together the sum of three hundred and thirty-four pounds six shillings and sevenpence halfpenny, on the said twenty-fifth of March, in the year aforesaid, became due, in arrear, and unpaid from the said Elizabeth to the said Edward, and at the said time when, &c. were and remained due, in arrear, and unpaid unto the said Edward, he the said John, as bailiff of the said Edward, well acknowledges the taking

3d cognizance,
for both rents
joined.

taking of the said cattle, goods, and chattels in the said place in which, &c. and justly, &c: after the said two last-mentioned rents became due, to wit, at the said time when, &c. for and in the name of a distress for the said two last-mentioned rents so due, in arrear; and unpaid to him the said Edward as last aforesaid, which said two last-mentioned rents still remain due, in arrear, and unpaid; and this, &c.; wherefore, &c. THO. WALKER.

Plea in bar, that after rent due, and before distress, that plaintiff tendered the rent.

2d Plea to first cognizance, *de injuria sua*, and traverse of plaintiff holding *locus*.

3d Plea to 1st cognizance, *de*

injuria sua, and traverse of the rent being in arrear. To 2d cognizance, *de injuria*, &c. and traverse plaintiff's holding.

And the said Elizabeth, as to the said cognizance of the said John by him first above made, says, that he the said John, by reason of any thing by him in the cognizance above alledged, ought not, as bailiff of the said Edward Montgomery, to acknowledge the taking of the said cattle, goods, and chattels in the said place in which, &c. to be just; because she says; that after the twenty-fifth of March 1782, and before the said time when, &c. to wit, on the twenty-sixth of March, in the year aforesaid; at the parish aforesaid, in the county aforesaid, she the said Elizabeth tendered and offered to pay to the said Edward the said fifty-five pounds eleven shillings and sevenpence halfpenny in that cognizance mentioned, which the said Edward then and there wholly refused to accept; and that after the said tender so made as aforesaid, and before the said distress was so made and taken as aforesaid, no request or demand of the said fifty-five pounds eleven shillings and sevenpence halfpenny was ever made of the said Elizabeth by the said Edward, or any other person on his behalf; and this, &c.; wherefore she prays judgment and her damages, by reason of the taking and unjustly detaining of her said cattle, goods, and chattels, to be adjudged to her, &c.: And for a further plea in bar in this behalf, the said Elizabeth, by leave, &c. says, that the said John, by reason of any thing in that cognizance above alledged, ought not, as bailiff of the said Edward, to acknowledge the taking of the said cattle, goods, and chattels in the said place in which, &c. to be just; because she says; that he the said John, at the said time when, &c. of his own wrong took the said cattle, goods, and chattels in the said place in which, &c. and detained the same against sureties and pledges until, &c. in manner and form as the said Elizabeth hath above complained against him; without this, that she the said Elizabeth continually for one quarter of a year next before and ending on the twenty-fifth of March 1782, and from thence until the said time when, &c. held and enjoyed the said farm in which, &c. with the appurtenances, as tenant thereof under such demise to her thereof made, as in the said cognizance in that behalf is above alledged; and this, &c.; wherefore inasmuch as the said John hath above acknowledged the taking of the said cattle, goods, and chattels in the said declaration mentioned, she the said Elizabeth prays judgment and her damages, by reason of the taking and unjustly detaining the same, to be adjudged to her, &c.: And the said Elizabeth, for a fur-

ther

ther plea in this behalf, by like leave, &c. &c. ; because she says, that the said John, at the said time when, &c. of his own wrong took the said cattle, goods, and chattels in the said place in which, &c. and unjustly detained the same against gages and pledges until, &c. in manner and form as the said Elizabeth hath above complained against him ; without this, that the said fifty-five pounds eleven shillings and sevenpence halfpenny in that cognizance mentioned, or any part thereof, at the said time when, &c. was in arrear and unpaid from the said Elizabeth to the said Edward, in manner and form as the said John hath in his said first cognizance in that behalf alledged ; and this, &c. ; wherefore inasmuch, &c. : And the said Elizabeth, as to the said cognizance of the said John by him secondly above made, says, that he the said John, by reason of any thing, &c. &c. ; because she says, that the said John, at the said time when, &c. of his own wrong, took the said cattle, goods, and chattels in the said place in which, &c. and unjustly detained the same against gages and pledges until, &c. in manner and form as the said Elizabeth hath above complained against him ; without this, that the said Elizabeth held and enjoyed the said farm in which, &c. with the appurtenances, as tenant thereof to the said Edward under any demise thereof made by the said Edward, as in the said second cognizance in that behalf is above alledged ; and this, &c. ; wherefore she prays judgment and her damages by reason of the taking and unjustly detaining of her said cattle, goods, and chattels, to be adjudged to her, &c. : And for further plea, &c. &c. ; because she says, that the said John, at the time when, &c. of his own wrong took the said cattle, goods, and chattels, in the said place in which, &c. and unjustly detained the same against gages and pledges until, &c. in manner and form as the said Elizabeth hath above thereof complained against him ; without this, that the said two hundred and seventy-eight pounds fifteen shillings in the said second cognizance mentioned, or any part thereof, ever became or were due from the said Elizabeth to the said Edward, as the said John hath in his second cognizance in that behalf above alledged ; and this, &c. ; wherefore inasmuch, &c. : And the said Elizabeth, as to the said last cognizance, &c. ; because she says, that the said John, at the said time when, &c. of his own wrong took the said cattle, goods, and chattels in the said place in which, &c. and unjustly detained the same against gages and pledges until, &c. as the said Elizabeth hath above thereof complained against him ; without this, that she the said Elizabeth held and enjoyed the said farm in which, &c. with the appurtenances, as tenant thereof to the said Edward, as in the last cognizance above alledged ; and this, &c. ; wherefore she prays judgment, &c. : And for further plea in bar in this behalf to the said cognizance of the said John by him lastly above made, as to the said sum of fifty-five pounds eleven shillings and sevenpence halfpenny in that last cognizance mentioned, she the said Elizabeth, by leave, &c. ; because she says, that after the said twenty-fifth of March 1782, and before said time when, &c. to wit, on the twenty-sixth of March, in the year aforesaid, at the

2d Plea to 2d cognizance *de injuria*, &c. and traversing the rent becoming due to defendant.

To 2d cognizance, *de injuria*, &c. and traverse of plaintiff's enjoying.

2d Plea to 3d cognizance, that after it became due, and before distress, the plaintiff offered to pay, &c.

3d Plea to 3d cognizance, *de injuria*, &c. and traverse that the 278l. ever becoming due.

parish aforesaid, she the said Elizabeth tendered and offered to pay to the said Edward the said fifty five pounds eleven shillings and sevenpence halfpenny in that cognizance mentioned, which the said Edward then and there refused to accept, and that after the said tender so made as aforesaid, and before the said distress was so made or taken as aforesaid, no request or demand of the said fifty-five pounds eleven shillings and sevenpence halfpenny was either made of the said Elizabeth by the said Edward, or any other person on his behalf; and this, &c.; wherefore she prays judgment &c.: And for further plea, &c.; because she says, that the said John, at the said time when, &c. unjustly detained the same against gages and pledges, until, &c. as the said Elizabeth hath above thereof complained against him; without this, that the said two hundred and seventy-eight pounds fifteen shillings, or any part thereof, ever became or were due from the said Elizabeth to the said Edward, as the said John hath in his said last cognizance above alleged; and this, &c.; wherefore she prays judgment, &c.

J. ADAIR.

Replication, if-
sue on all the
pleas.

And the said John, as to the said plea of the said Elizabeth by her first above pleaded in bar to the said cognizance of the said John by him first above made, says, that by reason of any thing in that plea alleged, he ought not to be barred from acknowledging the taking of the said cattle, goods, and chattels in the said place in which, &c. to be just; because he says, that after the said twenty-fifth of March 1782, and before the said time when, &c. she the said Elizabeth did not tender or offer to pay to the said Edward the said fifty-five pounds eleven shillings and sevenpence halfpenny in the said cognizance mentioned, in manner and form as the said Elizabeth hath in her said plea in bar alleged; and of this he the said John puts himself upon the country, and the said Elizabeth doth the like, &c. (Issue on all the pleas.)

Postea.

Afterwards the process being continued between the parties aforesaid, in the plea aforesaid, the jury thereon between them is respited before the justices of our lord the king at Westminster, until fifteen days from the day of Easter, unless the lord our king's justices assigned to hold the assizes in the county aforesaid, by force of the statute in that case made and provided, shall first come on Monday, the third of March 1783, at Northampton, in the county aforesaid, for default of the jurors, &c.; at which day, before the justices of our lord the king at Westminster, come as well the said Elizabeth by her attorney aforesaid as the said John by his attorney aforesaid, and the aforesaid justices, before whom, &c. have sent here the record thereof had before them in these words, to wit: Afterwards, on the day and in the year, and at the place within contained, before sir James Eyre, knight, one of the barons of the exchequer, and , to the said sir James Eyre and sir John Skynner, knight, chief baron of the exchequer of our said lord the king, justices of our said lord the king appointed to take the assizes within and for the within-mentioned county by

by force of the statute in such case made and provided in this behalf associated, the presence of the said sir J. Skynner not being expected by virtue of the writ of our said lord the king of *fi non comes*, &c. came as well the within-named Elizabeth Harris as the said John Shell, by their attornies within-mentioned, and the jurors of the jury, whereof mention is within made, being called, to wit, John Clarke, J. Adams, Samuel Ested, Richard Kaley, Robert Andrew, Thomas Samwell, Thomas Wade, George Ashley, Peter John Fremaux, Charles Fox, Thomas Mercer, and Charles Newman, esquires, likewise come, and are sworn upon that jury, and being chosen, tried, and sworn to speak the truth of the matters within contained, as to the said first issue between the parties joined, upon their oath say, that after the twenty-fifth of March 1782, and before the said time when, &c. the said Elizabeth did not tender or offer to pay to the said Edward Montgomery the said fifty-five pounds eleven shillings and sevenpence halfpenny in the said cognizance of the said John by him first above made, mentioned in manner and form as the said Elizabeth hath in her said plea first above pleaded alledged: And as to the said second issue between the parties aforesaid within joined, the jurors aforesaid, upon their oath aforesaid, say, that the said Elizabeth continuing for one quarter of a year next before and ending on the twenty-fifth of March 1782, and from thence until and at the said time when, &c. held and enjoyed the said farm in which, &c. with the appurtenances, as tenant thereof to the said Edward under such a demise to her thereof made, as in the said cognizance of the said John by him first above made so alledged [verdicts for avowant on all the issues]; and the jurors aforesaid assess the damages of the said John, by reason of the premises, over and above his costs and charges which he hath been put to about his suit in this respect to three hundred and thirty-four pounds six shillings and eightpence halfpenny, and for those costs and charges to forty shillings; and hereupon the said John freely here in court remits to the said Elizabeth three hundred and thirty-four pounds five shillings and eightpence halfpenny, parcel of the said three hundred and thirty four pounds six shillings and eight pence halfpenny, the damages aforesaid, by the jury aforesaid, in form aforesaid found; therefore the said Elizabeth, as to the said three hundred and thirty-four pounds five shillings and eightpence halfpenny, parcel, &c. is acquitted, and the said John prays judgment of the court here of and upon the premises aforesaid as to the first residue of the damages aforesaid, in form aforesaid, found, and the said forty shillings for the costs and charges aforesaid, and prays also a return of cattle, goods, and chattels aforesaid to be made to him; and because the justices here will advise themselves of and upon the premises, before they give judgment thereon, a day is given to the said parties here until on the morrow of the Holy Trinity, to hear their judgment thereon, for that the said justices here are not yet advised thereof; at which day, that is to say, on the morrow of the Holy Trinity came here the said parties by their attornies

1st Issue for defendant.

For avowant on all the issues.

Remittitur donec.

Judgment.

aforesaid, but because the justices here are not yet advised about giving judgment of and upon the premises, further day is thereupon given to the said parties here until, &c. to hear judgment of and upon the premises, for that the said justices are not yet advised thereof [continuances to Hilary, Easter, and Trinity terms]; at which day come here as well the said John Shell as the said Elizabeth, by their attornies aforesaid, and hereupon the premises being seen by the justices here and fully understood, it is considered that the said Elizabeth Harris take nothing by her declaration aforesaid, but that she be in mercy, &c. and that the said John Shell go thereof without day, &c.; and it is further considered, that the said John shall recover the said first residue of the damages aforesaid, and also forty pounds for his costs and charges aforesaid, by the jurors aforesaid in form aforesaid adjudged, together with pounds for his increased costs and charges adjudged to the said John Shell at his request, by the justices of our said lord the king now here, which said costs and charges amount in the whole to pounds, and that he have a return of the cattle, goods, and chattels aforesaid to be detained to himself irrepleviable for ever.

H. RUSSEL.

The jury at the trial found the first, second, third, fourth, fifth, sixth, and seventh issues for the defendant, and a case was reserved for the opinion of the court on the fifth and eighth issues, which turned upon the second and last cognizance, viz. whether the increased rent could be distrained for or not, which after solemn argument in C. B. the court held in the affirmative. The postea was indorsed thus, one, two, three, four, five, six, seven, issues for avowant, damages fifty-five pounds eleven shillings and eightpence halfpenny, costs forty shillings, and after the court had determined on the case reserved to the above indorsement on the postea, was, and for avowant on the fifth and eighth issues, damages two hundred and seventy five pounds fifteen shillings, costs forty shillings. After mature consideration, I drew the postea and judgment as above.

The judgment at common law in replevin for avowant is a *retorno habendo*. No damages were recoverable before or by the statute of Gloucester; therefore, no costs by that statute, the statute of 7. Hen. 8. c. 4. and 21. Hen. 8. c. 19. gave avowants in cases of rent, &c. if they recovered, or plaintiffs were otherwise barred damages and costs. Thus it stood till 17. Car. 2. c. 7. by which statute (which relates only to distresses for rent) it is provided, that if plaintiff be nonsuited before issue joined, the defendant making suggestion in nature of an avowry, &c. shall have a writ of inquiry to ascer-

tain the sum in arrear, and the value of the distress, and have judgment for the arrears with costs, &c.; and in case plaintiff, after avowry, &c. shall be nonsuit, or if verdict shall be given against him, then the jury impannelled to try the issue shall, at the prayer of the defendant, enquire concerning the sum in arrear, and the value of the goods or cattle distrained, and thereupon defendant shall have judgment for such arrears or to so much as the cattle or goods distrained amount, together with full costs, and shall have execution for the same, by *fieri facias* or *elegit*, &c. By the above statute, the defendant in replevin for rent has another remedy than the common law had provided, which in all cases was a *retorno habendo* if he succeeded (if judgment was upon a demurrer, or after a verdict, the return is irrepleviable, 14. Hen. 7. c. 6.; if upon a nonsuit, and before verdict, the return is not irrepleviable); but if he will have this remedy he must pursue the statute, and therefore, if on trial he has a verdict, he must go on and pray the jury impannelled (for it cannot be supplied by a writ of inquiry aforesaid, since the statute ties it up to the jury impannelled, (1. Lev. 255. Carth. 362.) to enquire concerning the sum of the arrears, and the value of the goods distrained, &c. If this be omitted (as it was in the present case), the avowant cannot have judgment upon the statute, that is, he cannot have judgment for the arrears, and an execution by *fieri facias* or

or *elegit* for the arrears, damages, and costs, the jury must find both the value of the distress and the rent in arrear. If they find the one and not the other the defendant still cannot have judgment upon the statute, but in such case, and also where they find neither the one nor the other, he must, if he takes judgment at all, have judgment at common law *pro retorno habendo*. Vide *Ld. Raym.* 170. 1. *Sid.* 380. 5. *Com. Digest*, 304.

To prevent vexatious replevins the 11. Geo. 2. c. 19. directs the sheriffs, upon making replevin where the distress is for rent, to take a replevin bond with two sureties, conditioned that plaintiff shall prosecute the suit with effect and without delay, and duly return the cattle or goods distrained in case a return be awarded, and this bond may be assigned to the party distraining, who is enabled to sue thereupon. It is to be observed, that the condition of the bond is copulative, for prosecuting the suit and for returning the distress, if a return be awarded.

In order to sue upon this bond it seems necessary that in the cause the defendant have judgment *pro retorno*, and that a writ *pro retorno* actually issue to which an *elongati* be returned, otherwise the bond is not forfeited. If, therefore, the defendant, in case of a distress for rent, pursues the statute remedy by the 17. Car. 2. and takes judgment for the arrears, he waives all benefit by the replevin bond, and cannot sue the sureties thereupon for want of an award of return and default made by plaintiff in not returning the distress, by taking such judgment he can only resort to the plaintiff and have execution against him by *fiat facias, elegit, &c.* If on the other hand the defendant elects the common law

remedy, and takes his judgment *pro retorno*, he may upon an *elongati* returned to the writ *de retorno habendo* sued out thereupon, call upon the sheriff to assign him the replevin bond, and then bring an action against the sureties for the penalty (which must be double the value of the distress), who cannot be relieved therefrom other than by rule of court, which the court would not make but upon payment of the arrears together with all damages and costs.

In the present case therefore, as the verdict was incomplete for the statute remedy, (omitting the damage found by the jury), and for the costs which are pursuant to the statute of 7 & 21. Hen. 8. the common law judgment *pro retorno* was the better remedy for the defendant, as the sureties in the replevin bond were fully responsible, and the plaintiff not worth any thing.

After the statute 17 Car. was made, and before the replevin bond was given by the 11. Geo. 2. the statute judgment and execution seems to have been more eligible than the judgment and execution at common law, which was liable to many inconveniencies, since, if the judgment was not on a verdict or demurrer, the plaintiff might sue out a writ of second deliverance, and so revive the cause again, or else if an *elongati* was returned to the writ *pro retorno* the defendant was forced to sue out a *capias in writbernem* which might be returned until, &c. ; but now, since the 11. G. 2. which gives the replevin bond, I am of opinion that the common law judgment *pro retorno* is better in all cases of rent as the bondsmen may be sued, and if insufficient the sheriff is answerable to the party.

G. CROMPTON,

JOHATHAN REYNOLDS
against

SARAH TYAS AND SAMUEL COOK.

whereof was cut and reaped, and the other part unreaped, and one hundred cart loads of wheat in the straw, at Baln, in the parish of Snaith, in the said county, in a certain place there called Saville Closes, &c.

} YORKSHIRE, to wit.
Declaration for taking

} eight acres of wheat, part

And the said Sarah and Samuel, by A. B. their attorney, come and defend the wrong and injury, when, &c. and the said Sarah, as administratrix and cognizance as her bailiff, that T. H. seized in fee of a rent charge of 6s. issuing out of *locus*, and T. H. being, &c. and plaintiff being seized of *locus* 31. 12s. of rent for 12 years became due to T. H. in his lifetime, and is unpaid to defendant as administratrix ; administration granted, &c.

Avowry and
cognizance. A-
vowry as ad-

Administration
committed by
peculiar.

ad Avowry and
cognizance for a
quit rent of 6s.

administratrix of all and singular the goods and chattels, rights and credits, which were of the said Thomas Hopkinson at the time of his death, who died intestate, in her own right well avows, and the said Samuel, as bailiff of the said Sarah, well acknowledges the taking of the said corn, goods, and chattels in the said declaration mentioned, in the said place in which, &c. and justly, &c.; because they say, that one Thomas Hopkinson, for and during the space of twelve years and more next before the feast of St. Martin, in the year of Our Lord 1780, according to the old style and calculation of time formerly used in this kingdom, was seised as of fee and right, of and in a certain annual or yearly rent charge of six shillings, issuing out of the said place in which, &c. amongst other lands and tenements, with the appurtenances, and payable to the said Thomas Hopkinson on the feast day of St. Martin in every year, according to the said old style; and the said Thomas Hopkinson being so seised of the said rent, and the said Jonathan, during all the time aforesaid, and still being seised of the said place in which, &c. three pounds twelve shillings of the said rent, due and payable to the said Thomas Hopkinson, in his lifetime, for twelve years, ending on the feast of St. Martin, in the year of Our Lord 1780, according to the said old style, on that feast in that year became due and owing to the said Thomas Hopkinson, in his lifetime, and at the time of the death of the said Thomas Hopkinson, which said Thomas Hopkinson afterwards, to wit, on the twentieth of October 1781, at the parish aforesaid, in the said county, died intestate, remained and continued unpaid to the said Sarah, and at the said time when, &c. were wholly unpaid either to the said T. Hopkinson, in his lifetime, or to the said Sarah since the death of the said T. Hopkinson, (to which said Sarah, administratrix of all and singular the goods, rights, credits, cattle, and chattels which were of the said T. Hopkinson at the time of his death, who died intestate, after the death of the said T. Hopkinson, and before the said time when, &c. to wit, on the twenty-ninth of December 1781, at the parish aforesaid, in the said county, by William Coates, clerk, master of arts, commissary or official of the peculiar and spiritual jurisdiction of Snaith, lawfully authorised, to whom the granting of that administration did of right belong, was in due form of law committed), for which reason she the said Sarah, as administratrix as aforesaid, well avows, and the said Samuel, as her bailiff, well acknowledges the taking of the said corn, goods, and chattels, at the said time when, &c. in the said place in which, &c. and justly, &c. for and in the name of a distress for the said rent, so being in arrear and unpaid, which said rent still remains in arrear and unpaid; and this, &c.; wherefore, &c. [proferet of letters of administration] &c.: And for a further avowry and cognizance in this behalf, by leave, &c. she the said Sarah, as administratrix as aforesaid well avows, and the said Samuel, as bailiff of the said Sarah, well acknowledges, the taking of the said corn, goods, and chattels in the said declaration mentioned, in the said place in which, &c. and justly, &c.; because they say, that one T. Hop-

Hopkinson, for and during the term of twelve years and more, next before the feast of St. Martin 1780, according to the old style and calculation of time formerly used in this kingdom, was seised of fee and right of and in a certain quit rent of six shillings, payable for and in respect of the said place in which, &c. amongst other lands and tenements, with the appurtenances, to the said T. Hopkinson, on the feast of St. Martin in every year, according to the said old style, [from thence to the end same as first avowry, only instead of setting out the letters of administration say, "to which said Sarah administration was granted as aforesaid," (profert of letters of administration): 3d Avowry same as first, only defendant Sarah claims the rent charge in her own right, (and not as administratrix) for six years instead of twelve]: And for a further avowry and cognizance, by leave, &c. &c. &c.; because they say, that the said Sarah, for and during the space of six years next before the said time when, &c. and at the said time when, &c. was, and still is seised as of fee and right of and in a certain annual fee farm rent of six shillings, payable for and in respect of the said place in which, &c. amongst other lands and tenements, with the appurtenances, to the said Sarah, on the feast day of St. Martin in every year, according to the said old style, *which said last-mentioned rent had been duly answered and paid for the space of three years within the space of twenty years next before the first day of the session of parliament beginning and holden at Westminster the twenty eighth day of January 1727, in the first year of the reign of the late king George the Second, and from thence continued by several prorogations to the twenty-first of January 1731, being the fourth session of that parliament; and the said Sarah, being so seised of that rent, and the said John during all the said six years next before the said time when, &c. and at the said time when, &c. being seised of the said place in which, &c. because one pound sixteen shillings of the said last-mentioned yearly rent for six years, ending on the feast of St. Martin 1786, according to the said old style, on that day, in the year last aforesaid, became due to the said Sarah, and from thence, until and at the said time when, &c. were in arrear and unpaid to the said Sarah, she the said Sarah in her own right well avows, and the said Samuel, as bailiff of the said Sarah, well acknowledges, the taking of the said corn, goods, and chattels, in the said place in which, &c. and justly, &c. for and in the name of a distress for the said arrears of the said last-mentioned rent, so being in arrear and unpaid, and which said arrears of the said last-mentioned rent still remain due and unpaid to the said Sarah; and this &c.; wherefore, &c. [5th avowry same as fourth, except for a certain annual or yearly rent, instead of a fee farm rent]: And for a further avowry and cognizance, by leave of, &c.; because she says, that for the space of six years and more next before the said time when, &c. and also at the said time when, &c. he the said John was seised in his demesne as of fee of and in the said place when, &c. and held the same of the said Sarah by the rent of six shillings every year, at the feast of St. Martin, according to the old style, yearly to be paid, of which said last-mentioned rent the said Sarah was*

3d Avowry and cognizance same as last.

4th Avowry and cognizance, that defendant seised of a fee farm rent issuing out of locus, &c.

4. Gen. 2. c. 28. f. 5. is necessary to be stated. *Wide Bradbury v. Wright, Douglas, 624.*

seised in her demesne as of fee, and which said rent had been duly answered and paid for the space of three years within the space of twenty years before the first day of the session of parliament begun and holden at Westminster the twenty-third of January 1727, in the first year of the reign of the late king George the Second, and from thence continued by several prorogations to the twenty-first of January 1731, being the fourth session of that parliament; and the said Sarah being so seised of the said last-mentioned rent, and the said Jonathan being so seised of the said place in which, &c. and because one pound sixteen shillings of the said last-mentioned rent, for six years, ending on the feast of St. Martin 1786, according to the old style, on that day in that year, became due to the said Sarah, and from thence until and at the time when, &c. were in arrear and unpaid to the said Sarah, she the said Sarah in her own right well avows, and the said Samuel, as her bailiff, well acknowledges the taking of the said corn, goods, and chattels, in the said place in which, &c. and justly, &c. for and in the name of a distress for the said arrears of the said last-mentioned rent so being in arrear and unpaid, and which said arrears of the said last-mentioned rent still remain due and unpaid to the said Sarah; and this, &c.; wherefore, &c.

S. LE BLANC.

Plea in bar, protesting that A. B. was not seised, &c. &c.

And the said Jonathan, as to the said avowry and cognizance of the said Sarah and Samuel first above made, says, that by reason of any thing in that avowry and cognizance alledged, the said Sarah as such administratrix as aforesaid, ought not to avow, nor ought the said Samuel to acknowledge the taking of the said corn, goods, and chattels in the said declaration mentioned, in the said place in which, &c. as just; because he says, that the said T. Hopkinson in the said avowry and cognizance mentioned was not, during the said time in that avowry and cognizance mentioned, or any part thereof, seised as of fee and right of and in the said annual rent charge of six shillings, issuing out of the said place in which, &c. amongst other lands and tenements *modo et forma, &c.*; and this the said Jonathan prays may be enquired of by the country, &c. and the said Sarah and Samuel do the like: And for a further plea as to the said avowry and cognizance first above made the said Jonathan leave, &c. &c. &c.; because he says, that the said three pounds twelve shillings paid of the said rent in the said avowry and cognizance above mentioned, were not, nor was any part thereof, due and owing to the said T. Hopkinson, in his lifetime, or to the said Sarah as such administratrix as aforesaid, at the said time when, &c. in manner and form, &c.; and this he prays may be enquired of by the country, &c. *similiter*: [Two like pleas to 2d avowry and cognizance, *mutatis mutandis*; two like pleas to 3d avowry and cognizance, *mutatis mutandis*; two like pleas to 4th avowry and cognizance, *mutatis mutandis*; two like pleas to 5th avowry and cognizance, *mutatis mutandis*]: And as to the said avowry and cognizance by the said defendants lastly above made, the said Jonathan saith, that by reason, &c.; because he says that he did not
for

for and during the said time in the said avowry and cognizance mentioned, or during any part thereof, hold the said place in which, &c. of the said Sarah by the rent of six shillings every year, *modo et forma, &c.*; and this he prays may be enquired of by the country, *similiter*: And plea to last avowry and cognizance, rent in arrear.

WILLIAM COCKELL.

On the trial of this cause at Spring assizes 1789, defendant had a verdict.—
Damages 3l. 12s.

DECLARATION for taking goods and chattels in common form.

And the said Thomas, by A. B. his attorney, comes and defends the force and injury, when, &c. and as executor of the last will and testament of Elizabeth Hold, deceased, well avows the taking of the said cattle, goods, and chattels in the said declaration mentioned, in the said place in which, &c. justly, &c.; because he says, that the said John for two whole years next before, and ending on the second of February 1781, and from thence until and at the time of the death of the said Elizabeth hereafter mentioned, enjoyed the said place in which, &c. with the appurtenances, as tenant thereof to the said Elizabeth, under a demise thereof theretofore made to him the said John by the said Elizabeth in her lifetime, at the yearly rent of thirty-four pounds, payable half yearly, that is to say, on the second day of August and the seventh day of February in every year, by even and equal portions, and during all that time held the same of the said Elizabeth, in her lifetime, by virtue of the said demise, as her tenant thereof, at the rent aforesaid; and because sixty-eight pounds of the said rent, due and payable by the said John to the said Elizabeth in her lifetime, and at the time of her death (which said Elizabeth, on the twenty-seventh day of February 1781, at the parish aforesaid, in the said county, died, having first made her last will and testament in writing, and thereby constituted and appointed the said Thomas executor thereof), remained and continued in arrear and unpaid to the said Elizabeth, and at the said time when, &c. were wholly unpaid either to the said Elizabeth, in her lifetime, or to the said Thomas, as executor of the last will and testament of the said Elizabeth, since the death of the said Elizabeth; and because the said John stayed and remained in possession of the said place called Ren Farm, in which, &c. continually from and after the death of the said Elizabeth, until and at the said time when, &c. he the said Thomas, as executor of the said last will and testament of the said Elizabeth, well avows the taking of the said cattle, goods, and chattels, at the said time when, &c. in the said place in which, &c. and justly, &c. for and in the name of a distress for the said rent, so in arrear and unpaid, which said rent still remains

Avowry by an executor for rent accrued in the lifetime of his testator.

AVOWRY FOR RENT.—PLEA IN BAR.

mains due, in arrear, and unpaid ; and this, &c. ; wherefore, &c.
(Profert of letters testamentary.)

Drawn by MR. CROMPTON.

DECLARATION for taking goods in certain rooms and apartments, part and parcel of a certain messuage, &c.

Avowry for an undivided moiety of the rent of *locas*.

And the said defendant, by A. B. his attorney, comes and defends the force and injury, when, &c. and well avows the taking of the said goods and chattels in the said rooms and apartments, part and parcel of the said messuage and dwelling-house, in which, &c. and justly, &c. ; because he saith, that the said plaintiff, for the space of one whole year, next before and ending on the feast day of the Annunciation of the Blessed Virgin Mary 1786, and from thence until and at the said time when, &c. enjoyed the said messuage or dwelling-house in which, &c. with the appurtenances, under a demise thereof theretofore made to him, at the yearly rent of twenty-two pounds one shilling, payable quarterly, on the feast day of the Nativity, &c. by even and equal portions, and during all that time held the same of the said defendant and one John Wingate, by virtue of the said demise, as their tenant thereof, at the rent aforesaid, as tenant of one undivided moiety thereof to the said William, at one moiety of the said rent, and as tenant of the other undivided moiety thereof to the said J. W. at the other moiety of the said rent ; and because eleven pounds six shillings and sixpence, being one moiety of the said rent due and payable by the said plaintiff to the said defendant for the space of one whole year, ending on the feast day of the Annunciation of the Blessed Virgin Mary 1786, on that day, and from thence until and at the said time when, &c. were in arrear and unpaid to the said defendant, he the said defendant well avows the taking of the said goods and chattels in the said rooms and apartments, part and parcel of the said messuage or dwelling-house in which, &c. and justly, &c. as for and in the name of a distress for the said moiety of the said rent so in arrear and unpaid, and which said moiety of the said rent still remains due, in arrear, and unpaid to the said defendant ; and this, &c. ; wherefore, &c. [Add another general avowry for eleven pounds six shillings and sixpence, one year's rent under a demise from defendant only.]

S. SHEPHERD.

Plea in bar, *de injuria*, &c. and traverses the holding.

And the said plaintiff says, that by reason of any thing by the said William in his first avowry above-mentioned, he ought not to avow the taking of the goods and chattels in the said place in which, &c. to be just ; because he says, that the said William of his own wrong took the said goods and chattels in the said place in which, &c. and justly detained the same against sureties and pledges until, &c. in manner and form as the said plaintiff hath above complained against him ; without this, that the said plaintiff enjoyed one undivided moiety of the said messuage or dwelling

ling-house, with the appurtenances, under any such demise thereof made to the said plaintiff by the said defendant, as in the said avowry is mentioned, at and under the said rent in the first avowry mentioned, payable as therein mentioned, as the said William hath in his said avowry above alledged; and this, &c.; wherefore, &c. [Like plea to last avowry.] J. MORGAN.

Replication, issue on traverses.

TOWN OF NEWCASTLE UPON TYNE, to wit. Declaration for taking a cask of wine.

And the said J. Green, by A. B. his attorney, comes and defends the force and injury, when, &c. and as bailiff of the mayor and burgesles of Newcastle upon Tyne, in the county of the town of Newcastle upon Tyne aforesaid, well acknowledges the taking of the said goods and chattels in the said place in which, &c. and justly, &c.; because he says, that within the said parish of St. Nicholas, and town of Newcastle upon Tyne aforesaid, in the county of the same town, there now is, and from time whereof the memory of man is not to the contrary there hath been an ancient port, and that the said place called the New Quay, in which, &c. at the said time when, &c. was, and is a quay within the said port and parish for landing of goods and merchandize from ships and other vessels coming into the said port; and that the town of, &c. aforesaid is, and from time whereof the memory of man is not to the contrary hath been, an ancient town and borough, and that the burgesles and inhabitants of the said town, for all the time whereof and until the thirtieth of August, in the twenty-first year of the reign of lady Elizabeth, hath been a body corporate and politic in deed and name, by various names of incorporation, and have at divers times within the time aforesaid, been called as well by the name of good men of the town of Newcastle upon Tyne as by the name of burgesles of N. &c. as also by the name of the burgesles and good men of the town of N. &c. as also by the name of the commonalty of the town of N. &c. as also by the name of the mayor and burgesles of the town of N. &c. and that the said late queen Elizabeth, on the said thirtieth of August, &c. by her letters patent under her great seal of England sealed, and into this court here brought, bearing date the same day and year; did grant, and for herself, her heirs and successors, by her letters patent did ordain and constitute, that the aforesaid town of N. &c. should be and should remain for ever from that time a free town of itself, and that the burgesles and inhabitants of the same town might and should be for ever after that time one body corporate and politic in deed and name, by the name of the mayor and burgesles of the town of N. &c. and them by the name of the mayor and burgesles of the town of N. &c. did for herself, her heirs and successors, by the same letters patent really and fully erect, make, ordain, and create one body corporate and politic, that

Cognizance as bailiffs to the mayor, &c. of Newcastle, under a custom to take toll of all wine imported therein, they having always repaired the port at their own expence, and because the plaintiff refused to pay, defendant well acknowledges.

that by the same name they should have a perpetual succession, as by the said letters patent it doth amongst other things more fully appear: And the said J. G. further says, that the said letters patent afterwards, to wit, on the said thirtieth of August, in the said thirty-first year, at, &c. was duly accepted by the said mayor and burgeses: And the said J. G. further says, that the burgeses and inhabitants of the town aforesaid, from time to time, for all the said time whereof, &c. by their various names of incorporation, until the said thirtieth of August, in the said thirty-first year, &c. and the mayor and burgeses of the said town of N. &c. for the time being from thenceforth hitherto have repaired and maintained, and been accustomed and ought to repair and maintain the said port at their own proper costs and charges, for the use and benefit of all persons importing goods in the said port, and for the benefit of the trade and navigation there; and for all the time aforesaid have of right been entitled, and have had, received, and taken, and have been used and accustomed to have, receive, and take, amongst other tolls and duties, a reasonable toll or duty, to wit, fourpence for every cask of wine called an Aume, not belonging to a freeman of the said town of N. &c. which for all the time aforesaid hath been imported and landed in the said port within the said town of N. &c. and when and as often as the said toll or duty hath been and remained unpaid after reasonable request and demand thereof made, the burgeses and inhabitants of the town aforesaid, from time to time, for all the said time whereof, &c. by their various names of incorporation, until the said thirtieth of August, &c. and the mayor and burgeses of the said town of N. &c. for the time being from thenceforth hitherto, by their ministers and servants, for all the time aforesaid used and have been accustomed to take a reasonable distress for the said wine so imported and landed in the said port, within the said town of N. &c. for the said toll or duty thereof, and to detain such distress until they were fully satisfied and paid the said toll or duty, or until such distress was replevied: And the said J. Green further says, that the said J. R. not being a freeman of the said town of N. &c. at or before the said time when, &c. did on the said eleventh of May 1737, import and land within the said town of N. to wit, on the said place in which, &c. seven casks of wine called aumes of which the said cask in the said declaration mentioned was one, by reason whereof two shillings and fourpence for the said toll or duty, to wit, fourpence for each of the said casks of wine so landed became due and payable from the said J. R. to the said mayor and burgeses of the said town of N. &c. whereupon the said J. G. as minister and servant of the said mayor and burgeses of the said town of N. &c. and by their command afterwards, that is to say, on the said eleventh of May 1737, at, &c. did demand of the said J. R. the said two shillings and fourpence for the said toll or duty for his said wine to be paid by the said mayor and burgeses, which the said J. R. did not pay, but did then and there refuse to pay the same; and because the said toll and duty of two shillings and fourpence at the said time when, &c. was in arrear
and

and unpaid to the said J. G. as bailiff of the said mayor and burgessees of the said town of, &c. well acknowledges the taking of the said goods and chattels in the said declaration mentioned, in the said place in which, &c. and justly, &c. in the name of a distress for the said toll or duty so unpaid as aforesaid; and this, &c.; wherefore, &c.

E. BOOTLE.

And the said plaintiff saith, that for the reason before alledged the said defendant, as bailiff of the said mayor and burgessees of, &c. ought not to acknowledge the taking of the said goods and chattels in the said declaration mentioned in the said place in which, &c. to be just; because he saith that the said defendant, at the time and place mentioned in the said declaration of his own wrong, took the said goods and chattels in the said declaration mentioned, and unjustly detained the same against sureties and pledges until, &c. in manner and form as the said plaintiff above thereof complains against him; without this, that the burgessees and inhabitants of the town aforesaid from time to time, for all the said time whereof, &c. by their various names of incorporations, until the said thirtieth of August, &c.: And the mayor and burgessees of the said town of, &c. for the time being from thenceforth until the time of the said cognizance have not repaired and maintained, and have been used and accustomed, and ought to repair and maintain the said port at their own proper costs and charges, for the use and benefit of all persons importing goods in the said port, and for the use and advantage of trade and navigation there; and for all the time aforesaid have of right been entitled, and have had, received, and taken, and have used and been accustomed to have, receive, and take, amongst other tolls and duties, &c. [as in cognizance to the words *was replevied*] in manner and form as the said J. G. hath above alledged in his said cognizance; and this, &c.; wherefore, &c.: And the said plaintiff, by leave, &c. saith, that for any reason before alledged in the said cognizance, the said J. G. as bailiff of the said mayor and burgessees of the town, &c. ought not to acknowledge the taking of the said goods and chattels in the said declaration mentioned in the said place in which, &c. to be just; because he says, that the town of B. in the county of York, is, and from time whereof, &c. hath been an ancient town and borough, and that for all the said time whereof, &c. the burgessees of the said town of B. have been, and were free and exempt, and yet ought to be free, quit, and exempt from the payment of all manner of tolls for their goods and merchandizes imported and landed in any part within England, except the port of London, and from all distresses to be taken for non-payment of such toll; and that at the time of importing and landing in the said port within the said town of, &c. the said cask of wine mentioned in the said cognizance, being the proper goods and merchandizes of the said plaintiff, and long before, and at the said time when, &c. and ever since, the said plaintiff was and yet is a burgesse of the said

Plea in bar, that defendant *do injuria sua*, &c. and traverse of the custom.

2d Plea, that plaintiff is a burgesse of B. in Yorkshire, and that the burgessees of B. from time whereof, &c. were free and exempt from the payment of all tolls for goods imported, unless into the port of London.

town of B. and ought to have been free, quit, and exempt from the payment of the said toll in the said cognizance mentioned for the said casks of wine of him the said plaintiff, by him imported and landed in the said port of, &c. as aforesaid, of all which said premises the said J. G. afterwards, and before the said time when, &c. to wit, on the first of January 1736, at, &c. had notice; nevertheless the said J. G. afterwards, to wit, at the said time and place mentioned in the said declaration, of his own wrong took the said goods and chattels in the said declaration mentioned of the said plaintiff, and unjustly detained the same against sureties and pledges until, &c. *modo et forma*, &c.; and this, &c.; wherefore, &c.

G. EYRE.

Replication in maintenance of the custom, and replication to 2d plea; traverse of the exemption of the burgesses of B. mentioned in 1st plea; issues thereon.

To first plea in bar issue on traverse: And as to the said plea in bar of the said plaintiff by him lastly above pleaded to the said cognizance of the said J. G. the said J. G. as before says that by reason of any thing above alledged he ought not to be barred from acknowledging, &c. because he says that the said toll or duty of two shillings and fourpence, by reason of the said importing of the said seven casks of wine called aumes as aforesaid, became due and payable from the said plaintiff to the said mayor and burgesses of the said town of, &c. and at the said time when, &c. were in arrear and unpaid; without this, that for all the said time whereof, &c. the burgesses of the town of B. &c. [as in second plea] *modo et forma*, &c. and this, &c.; wherefore, &c.

Issue on last traverse.

E. BOOTLE.

Declaration for taking plaintiff's cattle and goods of plaintiff in a place called Broomfield.

TREMBLE } CUMBERLAND, to wit. John Blen-
against } kinship was summoned to answer George
BLENKINSHIP. } Tremble in a plea wherefore he took the
cattle of the said George, and unjustly detained them against
sureties and pledges until, &c.; and whereupon the said George, by
A. B. his attorney, complains that the said John, on the fourteenth
of June 1750, at, &c. in a certain place there called Briggs
Close, took the cattle of the said George, to wit, three cows,
&c. and at the parish in the county aforesaid, in a certain place
there called Broomfield Meyre, there took other the cattle of
the said George, to wit, one cow; and at the parish in the county
aforesaid, in a certain other place there called Scarle's Lane,
otherwise Kich Lane, took other the cattle of the said George,
to wit, one gelding; and at the parish and county aforesaid, in
a certain other place there called Broomfield there took other the
cattle, and also the goods and chattels of the said George, to wit,
one calf, one cart, and one harrow, and unjustly detained them
against sureties and pledges until, &c. wherefore the said George
saith he is injured, and hath damages to the value of twenty
pounds; therefore he brings suit, &c.

4

And

And the said John, by A. B. his attorney, comes and defends the force and injury, when, &c. and well avows the taking of the said several and respective cattle, goods, and chattels in the said several and respective places in which, &c. and justly, &c. because he saith that the said George continually, from and after the feast of the Purification of the Blessed Virgin Mary 1747 until and upon the feast of the Purification of the Blessed Virgin Mary 1749, and from thence until and at the said time when, &c. enjoyed the said place called Broomfield, being one of the said places in which, &c. together with divers other lands and tenements, with the appurtenances, lying and being in the parish of Broomfield aforesaid, and during all that time was tenant thereof to the said John by virtue of and under a certain demise to him the said George by the said John before then made at and under the yearly rent of seven pounds during all that time payable to the said John from the said George at the feast of the Purification of the Blessed Virgin Mary yearly and every year; and because fourteen pounds for the rent aforesaid for two years of the said time ended on the feast of the Purification of the Blessed Virgin Mary 1749, and at that feast were due and in arrear from the said George to the said John, and at the same time when, &c. were wholly due, owing, and unpaid to the said John; and because the said George after the said rent so became due, owing, and in arrear as aforesaid, and within thirty days next before the taking of the said several and respective cattle, goods, and chattels, or any part thereof, to wit, on the same day and year in the said declaration mentioned, had fraudulently and clandestinely conveyed away, drove, and removed off the said cattle in the said declaration first, secondly, and thirdly mentioned, to prevent the said John from distraining the same for the said arrears of rent, and had for that purpose conveyed away, drove, and removed the same, to wit, the said three cows, one heifer, and two calves, in the said declaration first mentioned, into the said place called Briggs Close, in which, &c. the said cow in the said declaration secondly mentioned into the said place called Broomfield Meyre, in which, &c. and chased one gelding into the said place called Searle's Lane, otherwise Kich Lane, in which, &c. he the said John well avows the taking of the said several and respective cattle, goods, and chattels in the said several and respective places in the said declaration mentioned, in which, &c. at the said time when, &c. being thirty days next after the said cattle in the said declaration firstly, secondly, and thirdly mentioned were, and had been so fraudulently and clandestinely conveyed away, drove, and removed off the said demised premises, and justly, &c. for and as a distress for the said rent so being in arrear and unpaid, and this, &c. wherefore, &c.

Avowry for rent in arrear, and justifies taking distress in several places having been fraudulently carried off the premises.

D. POOLE.

And the said George says, that the said John, for the reasons above in his said avowry mentioned, ought not to avow the taking

Plea in bar, and rent in arrear.

taking of the said several and respective cattle, goods, and chattels in the said several and respective places in which, &c. to be just; because he says that at the said time when, &c. nothing of the aforesaid rent in the said avowry mentioned was in arrear to the said John; and this he prays may be enquired of by the country, &c.

DECLARATION for taking some cattle.

Cognizance, as bailiff to an administrator *de bonis non* for rent in arrear in the lifetime of the intestate.

And the said defendant comes and defends the wrong and injury, when, &c. and as bailiff of J. Cox, administrator of the goods and chattels which were of the goods and chattels of the right honourable Charles lord viscount Preston, deceased, who died intestate, unadministered by Anne viscountess dowager Preston, also deceased, well acknowledges the taking of the said goods and chattels in the said place in which, &c. and justly, &c. for four years rent, next before and ending on the feast of Saint Martin the Blessed, in winter 1737, under a demise made to the plaintiff by lord Preston, at one entire yearly payment, and that the plaintiff held the same as tenant thereof from thence until and at the said time, when, &c. and because eighteen pounds of the rent aforesaid due and payable by the said plaintiff to the said C. lord viscount P. for the said four years, ending on the said feast of Saint Martin the Blessed, in winter, in the year aforesaid, at the said feast, were in arrear and unpaid to the said C. lord viscount P. and also at the said time when, &c. were in arrear and unpaid to the said J. Cox as administrator in form aforesaid (to whom administration of the goods and chattels which were of the goods and chattels of the said C. lord viscount P. deceased, who died intestate, and unadministered by the said Anne viscountess dowager P. also deceased, after the death of the said C. lord viscount P. and of the said W. D. P. to wit, on the twenty-fourth of May 1745, at the parish aforesaid, was committed by Thomas, by divine providence, lord archbishop of York, primate of England, and metropolitan) the said defendant, as bailiff of the said J. Cox, administrator in form aforesaid, well acknowledges the taking of the said cow in the said place, in which, &c. and justly, &c. for and in the name of a distress for the said rent so in arrear and unpaid, which said rent still remains due, &c.; and this, &c.; wherefore, &c.: And the defendant, [profert of letters of administration, &c.]

E. BOOTLE.

Sarjeant Draper thought this cognizance not demurrable to, by reason of the statute of 11 George II. and there fore pleaded as follows:

Plea in bar, admitting that the defendant was bailiff, but

And the said plaintiff saith, that for the reason above alledged the said defendant ought not, as bailiff of the said J. Cox, to the defendant, *de injuria sua*, &c.

ac-

acknowledge the taking of the said cow in the said place, in which, &c. to be just; because he saith, that true it is that the administration of the goods and chattels, which were of the goods and chattels of the said Charles, late viscount lord P. deceased, who died intestate, and unadministered by the said A. viscountess dowager P. deceased, after the deaths of the said viscount lord P. and A. viscountess dowager P. and on the same day and year in the said cognizance in that behalf above mentioned was committed to the said J. Cox, by the said then archbishop, in manner and form as in the said cognizance above alledged; and that the said defendant was bailiff of the said J. Cox, as is also above alledged; but the said plaintiff for plea in this behalf saith, that the said defendant at the said time, when, &c. of his own wrong, and without the rest of the cause by him in his said cognizance above alledged, took the said cow in the said place, in which, &c. and unjustly detained the same against sureties and pledges until, &c. as the said plaintiff above thereof complains against him; and this he prays may be enquired of by the county, &c.: And the said plaintiff for further plea in this behalf by leave, &c. further saith, that the said defendant, for the reason above alledged, ought not, as bailiff of the said J. Cox, to acknowledge the taking of the said cow in the said place, in which, &c. to be just, because he saith, that the said plaintiff did not hold and enjoy the said place in which, &c. from the said feast of Saint Martin the Blessed, in winter 1738, until and at the said time when, &c. for the space of six calendar months next before the said time when, &c. nor for any part of the said six calendar months, under the said demise in the said cognizance above mentioned; and this, &c.; wherefore, &c.: And for further plea, &c. to be just, because he saith, that during all the said four years for which the said rent is supposed to have accrued due and then payable, he the said plaintiff held the said place in which, amongst other things, with the appurtenances of the said C. lord viscount P. under the said demise as his tenant thereof at will, only as long as the said plaintiff and viscount pleased at and under the yearly rent aforesaid, and that the said viscount during all that time was seised of the said place in which, &c. with the appurtenances amongst other things in his demesne of fee, and being so seised thereof, the said viscount, soon after the feast of Saint Martin the Blessed, in winter 1738, and before the feast of Saint M. 1739, to wit, on the sixteenth of February 1738, at the parish aforesaid, died seised of such his estate therein, without any issue of his body issuing, and thereby the said tenancy and estate at will of the said plaintiff was then and there ended and determined: And the said plaintiff further saith, that upon the death of the said viscount, the said place in which, &c. amongst other things, with the appurtenances so held by the said plaintiff, descended to the honourable Catherine, then the wife of W. W. esquire, commonly called lord Widdington, and the honourable Mary Graham, spinster, as being aunts and coheirs of the said viscount, by reason whereof the said W. W. and C. in

2d Plea, that he did not hold the *locus in quo* under the demise in the cognizance until the said time when, &c. or for six months until the said time when, &c.

3d Plea, that the plaintiff was tenant at will to lord P. that he died, upon whose death tenancy at will determined, and the same descended to his two aunts, who demised the same to the plaintiff and her husband; that the husband died, and tenancy ceases; the two coheirs demised the same premises to plaintiff, who entered, and put the cattle into premises.

right of the said C. and the said Mary, long before the said time when, &c. to wit, on the same day and year, entered into the said place, in which &c. amongst other things, with the appurtenances, and were seised thereof in their demesne as of fee in coparcenary; and being so seised thereof, they the said W. and M. long before the said time when, &c. to wit, on the eleventh of February in the same year, at, &c. demised the said place in which, &c. amongst other things, with the appurtenances to the said plaintiff, to have and to hold the same from the death of the said viscount as long as the said plaintiff and W. and M. should please; by virtue of which said demise the said plaintiff, before the said time when, &c. entered into the said place, in which, &c. amongst other things so demised to him as last aforesaid, with the appurtenances, and from thence until the death of the said W. was possessed thereof, and during all that time held and enjoyed the same as tenant at will thereof to the said W. and M.; and the said plaintiff being so possessed, the said W. afterwards, and long before the said time when, &c. to wit, on the first of May 1743, at the parish aforesaid, died, and thereby the said tenancy and estate at will of the said plaintiff was then and there ended and determined, and the said Catherine survived the said W. and the said C. and M. were seised of the said place, in which, &c. amongst other things in their demesne as of fee in coparcenary, and being so seised thereof, they the said C. and M. afterwards, and long before the said time when, &c. to wit, on the second of May 1743, at the parish aforesaid, demised the said place in which, &c. amongst other things, with the appurtenances to the said plaintiff, to have and to hold the same to the said plaintiff from the death of the said W. as long as the said C. and M. and plaintiff should please; by virtue of which said demise the said plaintiff, before the said time when, &c. entered into the said place in which, &c. and other things so demised to him as aforesaid, and from thence until and at the said time when, &c. was, and still is possessed thereof, and during all that time hath held and enjoyed the same as tenant at will thereof to the said C. and M.; and the said plaintiff being so possessed thereof, he the said plaintiff, before the said time when, &c. to wit, on the same day and year in the said declaration mentioned, put the said cow into the said place in which, &c. to feed on his grafs then growing there, which said cow was for the cause aforesaid in the said place in which, &c. feeding on the grafs there growing from thence until the said defendant at the said time when, &c. of his own wrong took the said cattle in the said declaration mentioned, and unjustly detained the same against sureties and pledges until, &c. *modo et forma*, &c.; and this, &c.; wherefore, &c.

R. DRAPER.

The cause was compromised.

AND

AND the said Richard, by A. B. his attorney, comes and defends the force and injury, when, &c. and well avows the taking of the said cattle in the said place in which, &c. and justly, &c.; because he says, that the same place in which, &c. is, and at the said time when, &c. was, and from time immemorial hath been a certain waste or lane called Greenaway Lane, and parcel of the manor of Mapple Durham, in the said county of Southampton, lying and being within the tithing of Brimton, within the same manor: And the said Richard further saith, that long before the said time when, &c. one Edward Gibbon, esquire, was, and yet is seised of and in the manor of Mapple Durham, with the appurtenances whereof, &c. in his demesne as of fee; and that the said Edward Gibbon, esquire, and all those whose estate he now hath, and at the said time when, &c. had of and in the said manor, with the appurtenances, for all the time aforesaid, have had and held, and have been used and accustomed to have and to hold a court leet and court baron within and for the said manor, at proper and convenient times; and that the jurors of the said court charged and sworn have been used and accustomed to present and make rules and orders for the better regulation of the commons and wastes within the said manor under certain reasonable penalties, and to present all those things which to the said court belong: And the said Richard further says, that at the court leet and court baron of the said manor, holden in and for the said manor before the said time when, &c. to wit, on the twenty fifth of November 1774, the jurors of the said court there, to wit, [here insert the names] good and lawful men of the said manor, then and there charged and sworn to present those things which to the said court belonged, then and there presented in the same court; that no horses or cows, beasts or bullocks should be turned out or depastured on the said common lands without a driver under the pain of one shilling for every horse, and sixpence for every cow, beast, or bullock; nor any hogs should be turned out into the said waste or lanes of the said manor unyoked or unringed under pain of sixpence for every hog: And the said Richard further says, that within the said manor there is, and from time whereof, &c. there hath been an ancient and laudable custom used and approved of within the said manor; that is to say, that the jurors charged and sworn to enquire and present these things which to the said court belong, at the said court of the manor aforesaid, holden as aforesaid, have chosen and presented, and for all the time aforesaid have been used and accustomed to choose and present certain persons to supervise the commons or wastes in and parcel of the said manor, within the respective tithings of the said manor, for one whole year, and until they should be discharged by due course of law; and the said persons so named have been sworn by the steward of the said court for the time being well and truly to execute the office of haywards for such tithings of the same manor respectively for the year next ensuing, or until they should be discharged by due

Avowry (for taking cattle) that the *locus in quo* is a waste parcel of the manor of A. and that one A. B. was lord of the manor, who was accustomed to hold a court baron for the regulation of the wastes; and that at a court duly held, it was ordered that no person should turn out any cattle without a driver, and that the court appointed officers to superintend the wastes, who if they found any cattle without a driver, were to impound; that the defendant was chosen one of the officers, and because he found the cattle without a driver, he well avows taking them as distress for damage feasant.

AVOWRY.—DISTRESS.

course of law; which said supervisors so chosen and named and sworn have for all the time aforesaid, from time whereof, &c. been called and known by the name of haywards, and the same supervisors for the time being for all the time aforesaid, whereof, &c. have supervised, and have been used and accustomed to supervise, as often as they pleased, the said commons and wastes within the same manor, lying and being within the respective tithings; and if any cattle of any persons whatsoever was found in any of the said commons and wastes feeding and depasturing in and upon such commons or wastes, contrary to the said presentment of the said jury of the said court, then the said supervisors for all the time aforesaid, whereof, &c. have used and been accustomed within the respective tithings for which they were so chosen, named, and sworn to be haywards as aforesaid, to take such cattle of any commoners so found in any of the said commons or wastes within their respective tithings as aforesaid, and to impound the same until the owners thereof paid the sum or sums of money ordered to be therefore paid by and in such presentments so made as aforesaid, or until the said cattle should be replevied by due course of law for the common utility and benefit of the tenants and occupiers of lands and tenements within the said manor having common of pasture there, and for the better order, government, and regulation of the same: And the said Richard further says, that the said E. Gibbon, being so seised of the said manor, with the appurtenances, at the court leet and court baron of the said E. Gibbon, lord of the manor aforesaid, held within and for the said manor as aforesaid, the said Richard, being a proper person, was named and chosen by the said jurors of the said court to be hayward of the said wastes and commons for the said tithing of B. and was then and there sworn by Richard Andrews, steward of the said court, well and truly to execute the said office of the said hayward within the said tithing for the year next ensuing, or until he should be discharged by due course of law; and because the said cattle of the said plaintiffs, having right of common of pasture in the said common lane at the said time when, &c. were on the said common lane or waste called G. Lane within the said manor, in which, &c. parcel thereof, without a driver, and feeding and depasturing upon the grass there then growing, contrary to the said order and presentment of the said jurors of the jury at the said court leet and court baron above mentioned, he the said Richard, being such hayward as aforesaid, well avows the taking of the said cattle in the said place in which, &c. and justly, &c. as a distress for the damage there then doing, and until the said plaintiff should pay the said two shillings, to wit, one shilling for each of the said colts, and this, &c.; wherefore, &c.: And the said Richard, for further avowry in this behalf, by leave, &c. well avows the taking of the said cattle in the said place in which, &c. and justly, &c.; because he says, that the same place in which, &c. is, and at the same time when, &c. was, and from time whereof, &c. hath been a certain waste

ad Avowry.

or

or common lane, called Greenaway Lane, parcel of the said manor of Mapple Durham, in the said county of S. lying and being in the tithing of Brimton, in the said manor: And the said Richard further says, that long before the said time when, &c. one Edward Gibbon, esquire, was and yet is seised of and in the manor of Mapple Durham, with the appurtenances thereof, &c. in his demesne as of fee; and that the said E. G. and all those whose estate he now hath, and at the said time when, &c. had of and in the said manor, with the appurtenances, for all the time aforesaid, have had and held, and been accustomed to hold a court leet and court baron within and for the said manor, at proper and convenient times; and that the jurors of the said court charged and sworn have been used and accustomed to present those things which to that court belonged: And the said Richard further says, that within the said manor there now is, and from time whereof, &c. hath been an ancient and laudable custom used and approved of in the said manor, that is to say, that the jurors charged and sworn to enquire and present those things which to the said court belong, at the said court of the manor aforesaid, have been used and accustomed to choose certain persons to supervise the commons or wastes in and parcel of the said manor within their respective tithings thereof; and the said persons being so chosen and made, have been sworn by the steward of the said court for the time being well and truly to execute the office of hayward within the respective tithings of the said manor for the year next ensuing, or until they should be discharged by due course of law; which said supervisors so chosen, named, and sworn, have for all the time aforesaid, whereof, &c. supervised, and have used and been accustomed to supervise, as often as they pleased, the said commons and wastes within the said manor, lying and being within their respective tithings: And the said Richard further says, that within the said manor there now is, and from time immemorial hath been a certain other ancient and laudable custom there used and approved of, that is to say, that no person or persons whatsoever, having right of common of pasture for their cattle in the wastes or common lanes of the said manor, should turn or put any horse into the common lanes of the said manor to depasture and feed upon the grass there without a driver, and if any horse of any person having such right of common as aforesaid has at any time been found in any of the said commons or wastes feeding and depasturing upon the grass there, then the supervisors for all the time aforesaid, whereof, &c. have used and been accustomed within their respective tithings for which they were so chosen, named, and sworn to be haywards as aforesaid, to take such horses so found within the said wastes or commons within their respective tithings, and to impound the same until the owners thereof paid a reasonable sum of money for the damage done by the said horses in the commons or wastes aforesaid, or until the said horses should be replevied by due course of law for the common utility and benefit of the tenants

and occupiers of lands and tenements within the said manor having common of pasture there, and for the better order, regulation and government of the same: And the said Richard further says, that the said Edward Gibbon, being so seised of the said manor, with the appurtenances, at the said court leet and court baron of the said manor, holden before the said time when, &c. to wit, on the said twenty-fifth of November 1774, the said Richard was chosen and named by the said jurors of the said court to be hayward of the said wastes or commons of the said tithing of B. for the then next succeeding year, or until he should be discharged by due course of law; and was then and there sworn by the said R. Andrews, steward of the court as aforesaid, well and truly to execute the office of hayward for the within said tithing for the year next ensuing, or until he should be discharged by due course of law; and because the said cattle of the said plaintiffs at the said time when, &c. were in the said common or waste, called G. Lane, within the said manor, in which, &c. without a driver, eating the grass there growing, the said Richard, being such hayward as aforesaid, well avows the taking of the said cattle in the said place in which, &c. and justly, &c. as a distress for the damage then and there doing, and until the said plaintiffs should pay a reasonable sum for the same, and this, &c.; wherefore, &c.

THOS. WALKER.

Plea in bar to first avowry, *de injuria*, and traverse of prescription to hold courts. &c. &c. and tender of amends. [1st. *De injuria sua*, and traverse of the prescription to hold courts, and for the jury to make rules, &c. and to present those things which to the said court belong. 2d. *De injuria sua*, and traverse of the presentment made by the jury for regulating the commons. 3d. *De injuria sua*, and traverse of the custom laid to appoint the haywards. 4th, Protesting that E.G. is not seised, and against the above-mentioned prescription and custom, *de injuria sua absque residua causæ*.]: And for further plea in this behalf, as to the said avowry of the said Richard first above named by leave, &c. say, that he the said Richard ought not to avow the taking of the said cattle in the said declaration mentioned to be just, because they say that after impounding the said cattle in the said declaration mentioned, that is to say, on the thirteenth of February 1775, at the parish of B. aforesaid, they the said plaintiffs did tender and offer to pay to the said Richard so being hayward of the said manor as aforesaid the said sum of two shillings, being one shilling for each of the said colts, which the said Richard then and there refused to accept and receive from the said plaintiffs; and the said Richard, of his own wrong, unjustly kept and detained the said cattle against sureties and pledges until, &c. (*modo et forma*), &c.; and this, &c.; wherefore, &c. [6th, 7th, 8th, and 9th like the four first pleas to the first avowry, *mutatis mutandis*.]

F. BULLER.

I have

I have added a plea of tender to the first avowry, because it is requested; but I much doubt the propriety of it, for the general rule is, that a tender after impounding *has no effect*. However, this case differs from others in two very material circumstances; viz. that the *ten* is certain, and the custom

stated is only to impound till payment of that sum, and therefore it may not be amiss to take the opinion of the court upon the point, especially as it will not prevent plaintiffs from availing themselves of any other defence they can make.

F. BULLER.

DECLARATION for taking a spit at Oakley, in a place called the House, &c.

And the said F. and R. by A. B. their attorney, come and defend the force and injury, when, &c. and as bailiffs of T. C. esquire, well acknowledge the taking of the said spit in the said place in which, &c. justly, &c.; because they say, that the said place called the House, in which, &c. is, and at the said time when, &c. and long before, was a certain ancient messuage in Oakley aforesaid, in the holding of the said sir P. C. and that the said ancient messuage in which, &c. with the appurtenances, on the third of February 1746, and long before, was held of the said T. C. esquire, as of his manor of M. otherwise, &c. with the appurtenances, in the county aforesaid, by fealty and the yearly rent of three pounds, payable at the feasts of the nativity of St. John the Baptist and St. Martin the Blessed, in winter, by equal portions, and also by the service of doing suit at the court baron of the said manor, held and to be held from three weeks to three weeks within the said manor, of which said manor the said T. C. esquire, on the same day and year last-mentioned, and continually from thence until at and after the said time when, &c. was and still is seised in his demesne as of fee: And the said defendants further say, that the said ancient messuage in which, &c. with the appurtenances, so being in the holding of the said sir P. C. and the said T. C. esquire, so being seised of the said manor, with the appurtenances, in his demesne as of fee, he the said T. C. esquire, long before the said time when, &c. and long before the third of February 1746, that is to say, on twenty-seventh of January 1746, at O. aforesaid, did intend to hold a court baron in and for his said manor on the third of February 1746, of which the said sir P. C. afterwards, and before the said third of February 1746, to wit, on the twenty-seventh of January 1746, at O. aforesaid, had notice, and was then and there in due manner summoned to appear at the same court so intended to be held as aforesaid, and that the said sir P. C. did not on the said third of February 1746, appear at the same court so there intended to be held in and for the said manor, but to appear wilfully neglected and refused, and made default, by reason whereof the said T. C. was then prevented and hindered from holding a court baron in and for the said manor; and because the said suit of court at the intended court of the said T. C. esquire of his manor aforesaid so intended to be held in and for the

Cognizance (for taking a spit) as bailiffs of A. B. that the house in which, &c. was held of the manor of C. whereof A. B. was lord by fealty and doing service at the court baron, that the plaintiff being seised of the house, and the lord intending to hold a court baron, of which the plaintiff had notice, but he did not appear; whereby the lord was prevented from holding a court, wherefore the defendants well acknowledge the taking as a distress, &c.

said manor, on the third of February 1746, was not done and performed, they the said defendants, as bailiffs of the said T. C. well acknowledge the taking of the spit in the said place called the House, in which, &c. as in the said ancient messuage, with the appurtenances, held of the said T. C. in form aforesaid for the said suit at the said intended court so undone and unperformed, and justly, &c. according to the form of the statute in such case made and provided, and the said suit of court still remains undone and unperformed; And the said defendants, by leave, &c. as bailiffs of the said T. C. esquire, well acknowledges, &c. and justly, &c. because they say, that the said place called the House, in which, &c. is, and at the said time when, &c. and long before was a certain ancient messuage in O. then in the holding of the said sir P. C. and that the said messuage in which, &c. with the appurtenances, at the said time when, &c. and long before, was held of the said T. C. esquire, as of his manor of M. otherwise, &c. with the appurtenances, in the county aforesaid, by fealty and the yearly rent of three pounds payable half-yearly at the feast of the nativity of St. John the Baptist and St. Martin the Blessed, in winter, by equal portions, and also by the service of doing suit at the court baron of the said manor, held and to be held from three weeks to three weeks within the said manor, of which said manor the said T. C. at the said time when, &c. and long before was, and ever since hath been, and still is seised in his demesne as of fee, and that the said sir P. C. long before the said time when, &c. entered into the said ancient messuage, with the appurtenances, and was seised thereof in his demesne as of fee; and because the fealty of the said sir P. C. to the said T. C. esquire, at the said time when, &c. was not made, they the said defendants, as bailiff of the said T. C. well acknowledges the taking of said spit in the said place called the House in which, &c. as in the ancient messuage, with the appurtenances, held of the said T. C. as aforesaid as a distress for the said fealty not made, and justly, &c. according to the form of the statute in such case made and provided, and the said fealty still remains unmade; And the said defendants, by like leave, &c. as bailiffs of the said T. C. well acknowledge the taking, &c. and unjustly, &c.; because they say, that the said place called the House, in which, &c. is, and at the said time when, &c. and long before was a certain ancient messuage in O. aforesaid, in the holding of the said sir P. C. and that the said ancient messuage in which, &c. with the appurtenances, on the feast of St. John the Baptist 1747, and for the space of one year then last past and more, was held of the said T. C. esquire, as of his manor of M. otherwise, &c. with the appurtenances, in the county aforesaid, by fealty and the yearly rent of three pounds payable at the feast of the nativity of St. John the Baptist and St. Martin the Blessed, in winter, by equal portions, and also by the service of doing suit at the court baron of the said manor held and to be held from three weeks to three weeks within the said manor, of which said manor the said T. C. esquire, during

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all that time, and continually from thence until and at the said time when, &c. was and still is seised in his demesne as of fee; and because three pounds for the rent aforesaid for one year ended on the feast of St. John the Baptist 1747 at that feast in that year, and also at the said time when, &c. was due and in arrear to the said T. C. and unpaid, they the said defendants, as bailiffs of the said T. C. well acknowledge the taking the said spit in the said house in which, &c. as in the said ancient messuage, with the appurtenances, held of the said T. C. in form aforesaid, and justly, &c. as a distress for that rent so being due, in arrear, and unpaid to the said T. C. according to the form of the statute in such case made and provided, and the said rent still remains unpaid.

S. PRIME.

And the said sir P. C. as to the said cognizance of the said defendants first above mentioned, says, that for the reasons therein first above-mentioned, the said defendants, as bailiffs of the said T. C. ought not to acknowledge the taking of the said spit in the said place in which, &c. to be just; because he saith, that on the third of February 1746, no court baron in and for the said manor was held, whereby he the said sir P. C. could do or perform any suit of court; and this, &c.; wherefore since the said defendants have above acknowledged the taking of the said spit in the said place in which, &c. the said sir P. C. prays judgment and his damages, by reason of the unjust taking and detaining thereof, to be adjudged to him, &c. : And the said sir P. C. as to the cognizance first above made, for further plea in bar in this behalf, by leave, &c. says, that for the reasons in this behalf above alledged, the said defendants, as bailiffs of the said T. C. ought not to acknowledge the taking of the said spit in the said place in which, &c. to be just; because he says, that neither the said T. C. nor any other whose estate he hath, or at the said time when, &c. had of and in the said manor, with the appurtenances, was seised at any time within *forty years* next before the said taking of the said spit in the said place in which, &c. of the said services in the said first cognizance mentioned; and this, &c.; wherefore, &c. : And the said sir P. C. as to the said cognizance first above made, for further plea by leave, &c. saith, that for the reasons in this behalf above alledged, the said defendants, as bailiffs of the said T. C. ought not to acknowledge the taking of the said spit in the said place in which, &c. to be just; because he says, that he the said sir P. C. at the said time when, &c. held the said messuage, with the appurtenances, in which, &c. of the said T. C. as of his manor aforesaid, by the rent of one shilling only payable every year, payable at the feast of Pentecost only; without this, that the said messuage in which, &c. (Traverse of the holding by fealty, &c.) *modo et forma*, &c.; and this, &c.; wherefore, &c. [Plea to 2d cognizance same as 3d to 1st cognizance; 1st Plea to 3d cognizance same as 3d to 1st cognizance; 2d Plea to ditto same as 2d to ditto]: And the said sir P. C. as to the said cognizance thirdly above

Plea in bar, that no court baron was held, and that the lord had not been seised of the place in which, &c. for the space of forty years, and traverse of the holding by fealty.

Vide 23. Hen. 8. c. 42.
8. Co. Rep. 65.

above made, for further plea by leave, &c. saith, that for the reason before alledged, the said defendants, as bailiffs of the said T. C. ought not to acknowledge the taking of the said spit in the said place in which, &c. to be just; because he saith, that at the time of taking the said spit in the said declaration mentioned, and before the impounding thereof, that is to say, on the said eighth of September 1747, at O. aforesaid, in the said county, the said sir P. C. was ready at the said messuage in which, &c. and did then and there tender and offer to pay to the said defendants, so being the bailiffs of the said T. C. as aforesaid, the said three pounds so alledged to be due and in arrear to the said T. C. for the rent aforesaid, which they then and there refused to accept and receive from the said sir P. C. nevertheless the said defendants of their own wrong, at the said time when, &c. unjustly detained the said spit in manner and form as the said sir P. C. hath in his said declaration above alledged; and this, &c.; wherefore, &c.

E. BOOTLE.

DECLARATION for taking goods and chattels in a certain messuage, warehouse, or shop, situate in the parish of St. James, Clerkenwell, in the county of Middlesex.

Cognizance for part of a quarter of a year's rent, and a whole half year's rent.

And the said John Gotobed, by A. B. his attorney, comes and defends the force and injury, when, &c. and as bailiff of one Thomas Horn well acknowledges the taking of the said goods and chattels in the said place in which, &c. and justly, &c.; because he says, that the said John Birkley, for three quarters of a year next before and ending at and upon the twenty-fifth of March last past, the same being the feast-day of the Blessed Virgin Mary in the year of Our Lord 1789, commonly called Lady-day, and continually from thence until and at the said time when, &c. held and enjoyed the said place in which, &c. amongst other premises, as tenant thereof to him the said Thomas Horn under a demise thereof to him made by the said Thomas Horn at the yearly rent of one hundred pounds of lawful money of Great Britain, payable to the said Thomas quarterly, to wit, at the four most usual feasts or days of payment in the year, that is to say, Christmas-day, Lady-day, Michaelmas-day, and Midsummer-day, by even and equal portions, and during all the time aforesaid held the said place in which, &c. amongst other premises, as tenant thereof to the said Thomas at the yearly rent aforesaid; and because sixty-six pounds ten shillings of the rent aforesaid for part of one quarter of a year's rent due on the twenty-ninth day of September last, the same being the feast of St. Michael the Archangel, commonly called Michaelmas-day, and for the whole of one half-year's rent due on the twenty-fifth day of March now last past, the same being the feast-day of the Annunciation of the Blessed Virgin Mary, commonly called Lady-day, the other part of the said quarter's rent, ending at Michaelmas 1788, having been before paid at and upon the

COGNIZANCE—PLEA—PRESCRIPTION TO HOLD A FAIR. 139

the said twenty-fifth of March last past, and at the time of the taking of the said goods and chattels in the said place in which, &c. were and still remains due, in arrear, and unpaid to the said Thomas Horn from the said John Birkley, he the said John Gotoled, as bailiff of the said Thomas Horn, well acknowledges the taking of the said goods and chattels in the said place in which, &c. justly, &c. for and in the name of a distress for the said rent so due and in arrear from the said John Birkley to the said Thomas Horn as aforesaid, which said rent still remains due, in arrear, and unpaid; and this, &c.; wherefore, &c. S. LE BLANC.

If avowry is for part of a quarter of a year's rent, it is necessary to shew how the rest is satisfied. BULL. NI. PRI. 56.

<p>ASTILL against CLARKE, AND ANOTHER.</p>	}	<p>AND the said William and Robert, by Thomas Pryor their attorney, come and defend the force and injury, when, &c. and as bailiffs of Daniel, earl of Nottingham, well acknowledge the taking of the sheep aforesaid in the said place in which, &c. and justly, &c.; because they say, that the said place in which the taking of the sheep aforesaid is supposed to be is, and at the said time when, &c. was the soil and freehold of him the said Daniel, earl of Nottingham; and because the sheep aforesaid, at the said time when, &c. was in the said place in which, &c. eating up the grass there then growing, and doing damage to the said earl there, the same William and Robert, as bailiffs of the said earl, and by his command at the said time when, &c. well acknowledge the taking of the sheep aforesaid in the said place in which, &c. and justly, &c. so doing damage there, &c.</p>	<p>Cognizance for damage feasant.</p>
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And the said John Astill says, that the said William Clarke the younger, and Robert Varnham, for the reason before alledged, as bailiffs of the said Daniel, earl of Nottingham, the taking of the sheep aforesaid in the said place in which, &c. ought not to acknowledge just; because he says, that long before the said earl of Nottingham had any thing in the said place in which, &c. the lady Elizabeth, late queen of England, was seised in her demesne as of fee, in her right of her dutchy of Lancaster, of and in the manor of Daventry, in the said county of Nottingham, with the appurtenances, whereof the said place in which, &c. then was parcel; and being so thereof seised, she the said lady queen Elizabeth, on the twenty-sixth day of March, in the eighteenth year of her reign, by her letters-patent under the great seal of England sealed, bearing date at Westminster the said twenty-sixth day of March, in the eighteenth year of her reign aforesaid, of her special grace, for herself, her heirs, and successors, gave and granted appears; by virtue whereof the corporation were seised. Then they say, that the plaintiff bought the sheep, and paid for the toll thereof, and had the sheep in taken away by the defendants.

Bar to the cognizance, that before A. B. had any thing in the place in which, &c. Queen Elizabeth was seised in fee in right of her dutchy of Lancaster, and granted by her letters patent under the great seal to the corporation of Daventry a market in the place in which, &c. and two fairs, as by the letters patent appears; that at one of the fairs his custody until

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ed to the bailiff, burgesſes, and commonalty of the borough of Daventry, in the county of Northampton, and their ſucceſſors, that they from henceforth for ever ſhould have and hold, and might have and hold within the borough aforeſaid, the precincts and liberties of the ſame, two markets or fairs yearly to be held and kept there, to wit, one fair on Tueſday next after the feaſt of Eaſter continually for two days from thence next enſuing to continue, and one day on the fair of St. Matthew the Apoſtle, and continually for two days thence next enſuing to continue, together with a court of pie-powder, and with all profits, commodities, and emoluments whatever from ſuch markets or fairs, coming, happening, ariſing, or contingent, and with all liberties and free customs to ſuch markets or fairs belonging or appertaining, as by the letters-patent aforeſaid, which the ſame John ſealed under the great ſeal of England here in court produces, more fully appears; by virtue of which ſaid grant, the ſaid bailiff, burgesſes, and commonalty of the borough of Daventry aforeſaid, and their ſucceſſors, were ſeiſed and yet are ſeiſed as of fee and right, in the right of their corporation aforeſaid, of and in a fair yearly to be held on the ſaid place in which, &c. called the High-ſtreet, within the borough of Daventry aforeſaid on the ſaid Tueſday next after the feaſt of Eaſter, and continually for two days thence next enſuing, and of and in another fair yearly to be held on the day of St. Matthew the Apoſtle, and continually for two days from thence next enſuing, with all liberties and free customs to ſuch fairs belonging: And the ſame John further ſays, that at a fair held in the ſaid place in which, &c. within the borough of Daventry aforeſaid, in full and open fair there bought of a certain perſon unknown the ſheep aforeſaid, and the cuſtomary toll for ſheep in that fair bought, payable then and there to the ſaid bailiff, burgesſes, and commonalty of the borough of Daventry aforeſaid paid; whereupon the ſheep aforeſaid then and there in the cuſtody of him the ſaid John lawfully being, they the ſaid William and Robert, that ſheep of him the ſaid John in the ſaid place in which, &c. in that fair, then took and unjuſtly detained, in manner and form as the ſaid John above againſt them complains; and this the ſame John is ready to verify; wherefore for that the ſaid William and Robert, the taking of the ſheep aforeſaid above acknowledges, the ſame John prays judgment and his damages, by reaſon of the taking and unjuſt detention of that ſheep, to be adjudged to him, &c.

Demurrer.

And the ſaid Robert Varnham and William Clarke ſay, that the plea aforeſaid of the ſaid John Aſtill above in bar to the cognizance aforeſaid pleaded, they have no neceſſity, nor are they by the law of the land obliged to answer; and this they are ready to verify; wherefore for want of a ſufficient plea of the ſaid John in this behalf, the ſaid William and Robert pray judgment and a return of the ſheep aforeſaid, together with their damage, &c. to be adjudged to them, &c.

And

And the said John, for that he hath above alledged sufficient Joinder. matter in law for him the said John to maintain his action afore- said against the said William and Robert had, which said matter the said William and Robert do not deny, nor in anywise answer to it, but altogether refuse to admit that averment, prays judgment and his damages, by reason of the taking and unjust detention of the sheep aforesaid, to be adjudged to him, &c.; and because, &c.

In this case the question was, whether the grant under the great seal of a privilege in dutchy lands out of a dutchy were good? or, whether it ought not to have

been under the dutchy seal? And, after great deliberation, the Court gave judgment for the plaintiff that it was.

WRITS, &c. DECLARATIONS, &c. AND DETACHED PROCEEDINGS.

SURRY, to wit. James Tickner, late of the parish of, &c. in the county aforesaid, yeoman, was attached to answer to Harman Tickner in a plea why he took the goods, cattle, and chattels of him the said plaintiff, and unjustly detained them against sureties and pledges, &c.; and thereupon the said plaintiff, by A. B. his attorney, complains that the said James, on, &c. in the twentieth year of the reign of his majesty king George the Third, now king of Great Britain, &c. &c. at the parish of, &c. in, &c. took the goods, cattle, and chattels of him the said plaintiff, to wit, a parcel of oats unthreshed and some pease, six acres of barley standing, four other acres of barley mowed, four acres of other barley standing, and four acres of beans standing, and unjustly detained them against sureties and pledges until, &c. whereby the said plaintiff saith that he is injured, and hath damage to the value one hundred pounds; and therefore he brings his suit.

Declaration In C. B. Replevin for taking plaintiff's oats, barley, pease, beans, &c.

And the said James, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that the said declaration of the said plaintiff in manner and form aforesaid made and declared, and the matters therein contained, are not sufficient in law for the said plaintiff to have or maintain his said action against him the said James; and that he the said James has no need, nor is he bound by the law of the land to answer the said declaration in manner and form aforesaid made and declared; and this he is ready to verify; wherefore for want of a sufficient declaration in this behalf, the said James prays judgment, and that the said plaintiff may be barred from having his said action against him the said James; and for causes of demurrer in law, the said James, according to the form of the statute in such case made and, provided, assigns to the court here the causes following, that is to say, for that the said plaintiff hath not in or by his said declaration alledged or shewn in what particular place or places within the parish of, &c. the said James took the said goods, cattle, and chattels

Demurrer to declaration, that the *locus in quo* is not properly described, nor the number or kind of cattle specified.

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in the said declaration mentioned, or any part, nor hath specified or shewn in his said declaration the number or kind of the cattle by that declaration alledged and supposed to have been taken by the said James; by means whereof the said plaintiff artfully endeavours to prevent the said defendant from making a proper defence; and also for that the said declaration is in other respects uncertain, defective, and informal.

W. LAMBE.

Joinder, that the declaration is sufficient.

And the said plaintiff, forasmuch as he hath above declared a sufficient matter in the law to have and maintain his said action against the said James, which he is ready to verify; which said matter the said James hath not denied or given any answer thereto, but entirely refused to admit the verifying the same, the said plaintiff prays judgment and his damages, by occasion of the premises, to be adjudged to him, &c.

NASH GROSE.

In replevin, the plaintiff ought to alledge a certain place of taking, Yelv. 178. Hob. 16. Cro. Eliz. 896. Moor, 678. 1. Brownl. 176 For this notifies to what the defendant should make title,

Cro. Eliz. 896. ; and the place, as well as town, is traversable, 1. Sid. 10. Hob. 16. But the omission of it after verdict is helped, 1. Sid. 10. & 20. Hob. 16. Will 355.

Demurrer, for that the *locus in quo* is not described in the declaration.

For that it is not alledged, nor does it appear by the said declaration of the said plaintiff, when or in what particular place or places in the said parish in the said declaration mentioned, the said goods and chattels in the said declaration mentioned, or any part thereof, were taken, whereby the said defendant is totally prevented from making a proper defence to the said declaration, and for want of naming or mentioning in the said declaration the place or places where the said goods and chattels, or any part thereof, are above supposed to have been taken, the said defendant is prevented from taking any issue upon the place of taking, &c. and also for that the said declaration is in sundry other respects uncertain, insufficient, and wants form, &c.

General demurrer to an avowry and cognizance.

AND the said P. W. says, that the said avowry of the said avowant, and the cognizance of the said cognizees by them respectively above made, and the matters therein contained, are not sufficient in law for the said avowant in his own right to avow, or the said cognizees, as bailiffs of the said avowant, to acknowledge the said taking of the said cattle in the said place in which, &c. to be just; to which said avowry and cognizance in manner and form as the same is above made and set forth, he the said plaintiff is not under any necessity, or in anywise bound by the law of the land to answer; and this, &c.; wherefore for want of a sufficient avowry and cognizance in this behalf, the said plaintiff prays judgment and his damages, by him sustained on occasion of the taking and unjust detaining of the cattle aforesaid, to be adjudged to him, &c.

FOR

FOR that it does not appear by the said cognizance when or in what manner the said rent became due and in arrear from the said plaintiff to the said defendant, nor for what time; and for that it doth not appear, nor is it averred by the said cognizance that the said rent, or any part thereof, is still in arrear and unpaid.

Demurrer to cognizance, for that it is not stated how the rent became due, or that any was in arrear.

FOR that the said defendants have not, in or by their said avowry and cognizance, shewn any title to the said place in which, &c. in the said A. B. (one defendant) or in any other person under whom the said defendant holds the same as tenant at will, nor have they shewn or set out who is seised in fee thereof, or in what person or persons the freehold thereof is supposed to be, and for that the said avowry and cognizance is altogether vague, uncertain, insufficient, and wants form.

Cause of demurrer to an avowry, for that the tenant at will has not shewn who has the freehold.

And the said Daniel says, that the said avowry of the said Thomas by him the said Thomas above made, and the matter therein contained, are not sufficient in law to bar the said action of the said Daniel, or to avow the said taking of the said mare to be just, or to have a return thereof to which said avowry in form aforesaid made and pleaded, he the said Daniel has no occasion, nor is he bound by the laws of this realm to answer; and this he is ready to verify; wherefore for want of a sufficient avowry in this behalf, the said Daniel prays judgment and his damages, on occasion of the said taking and unjust detaining of the said mare, to be adjudged to him, &c.: And for causes of demurrer in law to the said avowry, the said Daniel, according to the form of the statute in such case made and provided, shews to the court here these causes following, to wit: for that the said avowry avers the taking of the said mare, and yet varies from the declaration of the said Daniel, in relation to the place of taking, whereas by the laws of this realm, if the said Thomas would have denied the place of taking mentioned in the declaration, he should have pleaded the same by way of plea in abatement to the *declaration* (a), and then made a suggestion for having a return of the said mare; and also for that the said Thomas avows the taking of the said mare upon a possessory title only of the place wherein he alledges the same was taken, and for that the said avowry is no answer to the said declaration, nor does it in any way admit or deny the same, and is pleaded in bar, which is wholly idle and repugnant, and for that the said avowry is uncertain, insufficient, and wants form.

Demurrer to an avowry, for that it states another *locus in quo* than that mentioned in the declaration, when it should have been by way of plea in abatement and that he only avows upon a possessory title.

(a) This must mean where the proceedings have been removed; if the action had been commenced in the superior court, in such case it seems that the plea should pray judgment of the writ,

of which the declaration is only a copy, and that praying judgment of the declaration would be bad upon a special demurrer.

The plaintiff's best way in this case is to demur as above. The avowry is wholly bad, and were you not to demur, the merits are against you; for tender of amends must be made before the impounding, and is of no effect afterwards, Lutw. 1596.

Sid. 18.
Hob. 16.
Moor, 678.
Cro. Eliz. 196.

Cro. Eliz. 372.
Mod. Cas. 103.
Vent. 127.
Salk. 92.
Carth. 139.
Bro. Abr. title
Rep. 31. 45.

In declarations in replevin, there must always be a place of taking certainly described, for the avowant must admit the caption to be in the place mentioned in the declaration, in order to shew the cause of taking it there, for if the avowant should lay the taking in another place than the plaintiff hath done, without traversing the place mentioned in the declaration, it would be altogether bad, because the avowant would neither confess and avoid, nor traverse; the declaration therefore would be nugatory, Gilb. Repl. 196. If a declaration of caption in *Black Acre*, and the defendant pleads in abatement of the Count, that he took them in *White Acre* absq. ahoc. that he took them in *Black Acre*, this will abate the Count under that form, but then he must go on and make cognizance, because not disaffirming plaintiff's title to the beasts, he leaves the plaintiff a right to distrain, but this cognizance is not traversable where it is pleaded in abatement, because the plaintiff must maintain the form of his own Count, without falling on the title of the defendant, and if the plaintiff should join issue on the traverse in the plea of abatement, and traverse the cognizance also, it would be double, and therefore bad upon special demurrer; and if plaintiff traversed the cognizance only, it would be a discontinuance of the plea

in abatement; but if a justification for damage feasant had been pleaded in bar there; the caption and detention, according to the form of the writ, is acknowledged; therefore the plaintiff may traverse the title of the defendant, because the defendant having acknowledged the caption and detention, according to the form of the Count, he hath put himself upon the strength of his own title, Gilb. Rep. 171, 2, 3; when the place is material. Vide *Strange*, 507. As to the cause of demurrer for avowing upon a possessory title, it is laid down as law, that the lessee who possesses *nomine alicuius*, hath no more than a precarious possession, which is either good or bad, according to the estate of him in whose right he possesses; therefore, if he doth not shew an estate to entitle himself to make the distress, it is bad, for it discovers the right to shew only a term; and not a freehold, out of which it is derived. It is only the freeholder, or his bailiff or person deriving under him that hath an authority to take another man's beasts upon the soil, for a stranger who is no bailiff of a freeholder is a trespasser; therefore if a person doth not shew in his avowry that he doth it in his own right, or by whose right, he doth not shew any right to take such distress; but if the plaintiff, instead of taking the beasts in his own hands for a compensation of damage, shall seek reparation by action of trespass, *quare clausum fregit* (as in such case he only claims a compensation for the damage done to his possession), he need only shew his possession, unless the defendant shew a right to the land itself.

T. WARREN.

LANCASHIRE, to wit. [Set out the declaration.]

Record in replevin in the common pleas at Lancaster, with special imparlances, judgment by default, *de re-torno habendo*, award of such writ, and return that the goods were elbigned.

And the said Edward thereupon prays a day to plead in bar to the said avowry of the said Henry, until the first day of the now next session of assizes to be holden in and for the county of L. aforesaid, and he has it, &c.; at which said first day of the said next sessions of assizes, to wit, at the sessions of assizes holden at Lancaster aforesaid, on Thursday, the sixteenth day of March, in the ninth year of the reign of our said lord the now king, before William lord Mansfield, chief justice of the said lord the king of his court of King's Bench at Westminster, and H. B. esquire, one of the justices of our said lord the king of his court of C. B. at Westminster, justices of our said lord the king at Lancaster, come as well the said Henry as the said Edward by their attornies aforesaid; and the said attorney prays that the said Henry may plead in bar

bar to the cognizance of the said Henry; and thereupon the said Edward hath, till the day of March, in this same session, given him by the court here to plead in bar to the same cognizance, the same day is given to the said Henry here, &c. at which day come here before his majesty's justices of his said session of assizes, to wit, at Lancaster aforesaid, the said Henry, by his attorney aforesaid, and the said Edward, although solemnly called, doth not appear, nor hath he pleaded in bar to the said cognizance of the said Henry, nor doth he further prosecute his said writ against the said Henry; therefore it is considered by the court here that the said Edward take nothing by his aforesaid writ, but that he and his pledges to prosecute be in mercy, &c. and that the said Henry do go thereof without day, for ever dismissed therefrom, and that he have a return of the said goods and chattels, &c.; and thereupon the said sheriff is commanded that without delay he cause to be returned the said goods and chattels to the said Henry, and that he doth not deliver the same to the said Edward without his majesty's writ, which shall make express mention of the aforesaid judgment, and that in whatsoever manner he shall have executed the said writ, he shall certify to his majesty's justices at Lancaster the first day of the now next sessions of assizes there to be held, the same day is given to the said Henry there, &c.; at which day of the said next session, to wit, at the session of assizes of our said lord, holden at Lancaster aforesaid, on the day of , in the ninth year aforesaid, before and justices of our said lord the king at Lancaster aforesaid, comes the said Henry by his aforesaid attorney, and the sheriff, to wit, , now sheriff of the county of Lancaster aforesaid, returns to the court here that the goods and chattels aforesaid have been before the coming in of the said writ eloigned to places unknown to the said sheriff, so that he cannot cause the same, or any part thereof, to be delivered to the said Henry, as by the said writ he was commanded, &c.

GEORGE the Third, by the grace of God, of Great Bri-
tain, &c. To the sheriff of Lancaster, greeting: Whereas H. T. was summoned to be in our court of the session of assizes at Lancaster, holden on Saturday, the thirteenth day of August, in the eighth year of our reign, before our justices at Lancaster, to answer E. P. of a plea, &c. [here insert the declaration down to "against sureties and pledges until, &c."] and the said H. T. came into our session of assize there holden before our said justices at L. aforesaid, and defended the wrong and injury when, &c. [here insert the avowry or cognizance to the end]; and such proceedings were thereupon afterwards had in our said court at Lancaster aforesaid, on Saturday, the sixteenth day of March, in the ninth year aforesaid, before our justices at L. aforesaid, it was considered in and by our said court, that the said E. P. should take nothing by his said writ, but that he and his pledges to prosecute should be in mercy, and that the said H. T. should go thereof without day

*Writ de retorno
habendo above
awarded.*

WRIT DE RETORNO, &c. IN THE COMMON PLEAS.

for ever dismissed therefrom, and that he should have a return of the said goods and chattels as by the record and proceedings thereof, in our said court at L. aforesaid, more fully appears; therefore we command you, that without delay you cause the said H. T. to have a return of the said goods and chattels, and that you do not deliver them on the complaint of the said Edward without our writ, which shall make express mention of the judgment aforesaid, and how you shall execute this our writ, certify to our justices at L. on the first day of the now next session of assizes to be held, and have there this writ.

Writ upon a
judgment *de re-
torno habendo* ir-
replevable in the
common pleas.

GEORGE the Third, by the grace of God, of Great Britain, &c. To the sheriff of Surry, greeting: Whereas M. D. was lately summoned to be in our court before our justices of the bench at Westminster, to answer T. H. in a plea; for that the said M. D. on, &c. at, &c. [recite the declaration and avowry to the end]; and thereupon the said T. H. being solemnly called to plead in bar to the said avowry of the said M. D. came not, but made default, nor did he further prosecute his said writ, and such proceedings were there thereupon afterwards had in our said court of the bench aforesaid, at W. aforesaid, that afterwards, to wit, in Hilary term, in the eleventh year of our reign, it was considered in and by our said court of the bench aforesaid, that the said T. H. should take nothing by his said writ, but that he and his pledges to prosecute should be in mercy, and that the said M. D. should depart our said court thereof without day, and that he should have a return of the said goods and chattels, to hold the same to her irreplevable, &c. as by the record and proceedings thereof remaining in our said court, before our justices of the bench aforesaid, at Westminster aforesaid, more fully appears; therefore we command you, that without delay you cause the said M. D. to have a return of the said goods and chattels, to hold the same to her irreplevable for ever, and how you shall have executed this our writ, certify to our said justices of the bench aforesaid, at Westminster aforesaid, in three weeks of Easter now next coming, and have you there then this writ. Witness sir William De Grey, knight, at Westminster, the twelfth day of February, in the eleventh year of our reign.

Writ upon a
judgment *de re-
torno habendo*
in an hundred
court.

KINGSTON Court, to wit. To E. R. bailiff of the said court, greeting: Whereas D. G. was summoned to be in the said court of the said hundred and liberty, to answer J. E. of a plea; wherefore on, &c. in the twenty-eighth year of the reign of his present majesty king George the Second, &c. at, &c. within the jurisdiction of the said court, in a certain place called B. he took the cattle of the said J. E. to wit, twenty-three sheep, of the value of seven pounds, and unjustly detained them against sureties and pledges until, &c.; and the said D. G. by A. B. his
at-

attorney, afterwards came into the said court, and defended the force and injury, when, &c. and well avowed the taking of the cattle aforesaid in the said place in which, &c. and justly, &c.; because he said, that the said close called B. in which the taking of the twenty-three sheep was supposed to be, did contain in itself eight acres of land at C. aforesaid, within the jurisdiction aforesaid; of which said close, with the appurtenances, one T. D. esquire, deceased, was seised in his demesne as of fee, and being so thereof seised on, &c. in the seventeenth year of the reign of, &c. at, &c. demised the said close, with the appurtenances, unto the said D. G. to have and to hold to the said D. G. from

then next ensuing, by and during, and unto the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said D. G. entered into the said close, with the appurtenances, before the time when, &c. and was thereof possessed; and because the said cattle aforesaid, at the said time when, &c. were in the said close in which, &c. treading down and eating up the grass and corn there then growing, and doing damage there, &c. the said D. G. well avowed the taking of the said cattle in the said place in which, &c. and justly, &c. so doing damage there; and that he was ready to verify; wherefore he prayed judgment and a return of the cattle aforesaid, together with his costs and damages in this behalf sustained, according to the form of the statute in such case made and provided, to be adjudged to him, &c.: And such proceedings were thereupon afterwards had in the said plea, that afterwards at and in the said court, and by the said court it was considered and adjudged, that the said J. E. and his pledges to prosecute should be in mercy: and that the said D. G. might part the court therein without day, and should have a return of the said cattle; therefore I command you, that without delay you return the said cattle to the said D. G. and that you do not deliver them at the complaint of the said J. E. without his majesty's writ, which shall expressly mention the said judgment, and in what manner you execute this precept you make appear at the next court to be held in and for the said hundred and liberty, on, &c. now next ensuing, at the Guildhall of the borough of Newport, within the jurisdiction of the said court, and have you then there this precept. Given under the hand and seal of the said court, the day of 1785. J. DICKENSON, Steward.

The cattle within-named, before the coming of the within precept, were eloigned to places unknown, so that I cannot make return thereof to the within-named D. G. as I am within commanded. The bailiffs return, that the goods were eloigned.

The answer of A. B. one of the bailiffs within-mentioned.

Judgment by default for want of a plea, and award of inquiry to the sheriff of damages in replevin. **DORSET**, to wit. John Williams was summoned, &c. [to the end of the declaration]: And the said J. W. by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says nothing in bar or denial of the said action of the said plaintiff, whereby plaintiff remains in the said plea against defendant without defence, for which reason the plaintiff ought to recover his damages by him sustained on occasion of the premises aforesaid; but because it is unknown to the said court here what damages the plaintiff hath sustained on occasion of the said taking and unjust detaining of the said cattle, therefore the sheriff of Dorset is commanded, that by the oath of twelve good and lawful men of his bailiwick, he diligently enquire what damages plaintiff hath sustained as well on occasion of the said taking and unjust detaining of the said cattle, as for his costs and charges by him about his suit in this behalf expended, and that he send the inquest, which he shall thereupon take to our said lord the king in fifteen days from the day of Easter, wheresoever our said lord the king should then be in England, under his seal and the seal of those by whose oath he shall take the said inquisition, together with the writ of our said lord the king to him therefore directed, the same day is given to the said plaintiff to be there, &c.

Appearance in replevin by defendant, and for default of plaintiff, judgment *de retorno habendo*. **ESSEX**, to wit. Mary Adams offered herself the fourth day of August against Mary Prior, widow, of a plea of taking and unjust detaining the goods and chattels against gages and pledges, &c.; and the said M. P. did not come, &c. and was plaintiff; therefore it is considered that the said M. P. take nothing by her aforesaid writ, but that she and her pledges of prosecuting be in mercy, &c. and that the said M. A. depart the court here without day, and that she have a return of the said goods and chattels.

Judgment *de retorno habendo* for want of plea to avowry. **SURREY**, to wit. Mary Dare, late of, &c. [to the end of the declaration and avowry]: And thereupon the said Thomas being solemnly called to plead in bar to the said avowry of the said M. D. comes not, but makes default, nor doth he further prosecute his said writ; therefore it is considered by the court here that the said Thomas take nothing by his said writ, but that he and his pledges to prosecute be in mercy, &c.; and that the said Mary depart the court here without day thereof, and that she have a return of the said goods and chattels, &c. to hold the same to her irrepleviable.

Judgment for the defendant *de retorno habendo* for want of plea to avowry, with costs of the defence, and award of execution. [TO the end of the declaration and avowry]: And thereupon the said cognizees pray that the said plaintiff may plead in bar to the said cognizance of the said defendants, and thereupon a day is given to the said plaintiff to plead in bar to the said cognizance of the said defendants, before our lord the king until in fifteen days of

of St. Martin, wheresoever, &c. the same day is given to the said defendants at the said place, &c. at which day, before our lord the king at Westminster, come the said defendants by their said attorney, and the said plaintiff although solemnly called doth not come, but makes default, neither has he pleaded in bar to the said cognizance of the said defendants, nor doth he further prosecute his said writ; therefore it is considered by the court here, that the said plaintiff take nothing by his said writ, but that he and his pledges to prosecute be in mercy, &c.; and that the said defendant depart the court here without day thereof, and that they have a return of the said goods and chattels; and it is further considered by the court here that the said defendants do recover against the said plaintiff pounds for their costs and charges by them about their defence in this behalf expended adjudged to the said defendants, and with their assent by the court here according to the form of the statute in such case made and provided, and that the said defendants have execution thereof.

And the said plaintiff, although solemnly called to plead to the said cognizance of the said defendants, doth not come, but makes default; therefore it is considered that the said defendants do go thereof without day, &c.; and thereupon the said defendants, according to the form of the statute in such case made and provided, pray a writ of our said lord the king to be directed to the sheriff of the county of S. aforesaid, to enquire of the sum in arrear of the yearly rent-charge aforesaid, and the value of the goods and chattels above specified, and it is granted them, &c.; therefore it is commanded to the sheriff of the county aforesaid, that by the oath of twelve honest and lawful men of his bailiwick, he diligently enquire how much of the yearly rent-charge aforesaid was in arrear to the said W. W. at the time of the taking of the said goods and chattels, and how much those goods and chattels so as aforesaid taken and distrained were worth, according to the true value thereof, which he shall take thereupon, he now manifest here on the morrow of All Souls, under his seal and the seals of, &c. at which day, &c. come here the said defendants by their attorney aforesaid; and the sheriff, to wit, A. B. esquire, returns here an inquisition taken before him at the house of E. F. in the county of S. aforesaid, on the day of now last past, by the oath of twelve good and lawful men of his bailiwick, by whom it is found that at the time of the taking of the said goods and chattels the sum of pounds of the yearly rent-charge in the cognizance aforesaid mentioned to be due to the said W. W. was and is in arrear, and that the goods and chattels aforesaid taken and distrained as aforesaid, according to the true value thereof, were then worth the sum of pounds; therefore it is considered that the said defendants recover of the said plaintiff the sum of pounds, being the value of the said goods and chattels so distrained in part of satisfaction of the said sum of of

JUDGMENT FOR WANT OF PLEA TO AVOWRY.

of pounds, as by the said inquisition aforesaid in form aforesaid found in arrear, and the damages by reason of the premises to pounds, by the court here adjudged to the said defendants at their request, for their costs and charges by them about their suit in this behalf expended, according to the form of the statute in such case made and provided, which said value, damages, costs, and charges, amount in the whole to pounds, and that they the said defendants have execution thereof.

Writ of inquiry and return upon a judgment for the avowant, *de retorno habendo* for want of a plea to his avowry, as surviving joint-tenant and tenant in severalty.

Avowry for half a year's rent in arrear under a demise to the plaintiff of the dwelling-house, by the avowant and one P. M. deceased, who the avowant survived.

GEORGE the Third, by the grace of God, &c. To the sheriff of S. greeting: Whereas F. A. heretofore, to wit, in Easter term, in the eighteenth year of our reign, was summoned to be in our court before us to answer unto A. O. in a plea, wherefore the said F. A. on, &c. at, &c. in your county, in a certain tenement and dwelling-house of the said A. O. situate in a certain place called Dirty-lane, in the said parish, there situate, standing, and being, took the goods and chattels, to wit, &c. &c. [set out the goods] of the said A. O. and unjustly detained them against sureties and pledges until, &c.; and thereupon the said F. A. afterwards, to wit, in Michaelmas term, in the nineteenth year of our reign, came into our said court before us, by A. B. his attorney, and then and there defended the wrong and injury, when, &c. and well avowed the taking of the said goods and chattels in the said declaration mentioned, in the said dwelling-house in which, &c. and justly, &c.; because he said, that the said A. O. for a long space of time, to wit, for the space of one half year next before and ending on the feast-day of A. D. 1778, and from thence until and at the said time when, &c. held and enjoyed the said dwelling house in which, &c. with the appurtenances, under a demise thereof thentofore made to him the said A. O. by the said F. A. and one P. M. deceased, in the lifetime of the said P. M. and whom he the said F. A. had survived, at and under the yearly rent of six pounds six shillings, payable half-yearly by even and equal portions: And the said F. A. in fact said, that after the making of the said demise, and before the said time when, &c. to wit, on, &c. at, &c. the said P. M. died, and that he the said F. A. had survived him, to wit, at the parish aforesaid; and because a large sum of money, to wit, the sum of three pounds three shillings of the rent aforesaid, due and payable from the said A. O. for one half year of the said term, ending after the death of the said P. M. whom he the said F. A. had survived as aforesaid, to wit, on the feast of , on that day, and from thence until and at the said time when, &c. was in arrear and unpaid, he the said F. A. well avowed the taking of the said goods and chattels in the said declaration mentioned, in the said dwelling-house in which, &c. and justly, &c. for and in the name of a distress for the said rent so due and payable, in arrear and unpaid as aforesaid: And the said F. A. in fact further said, that the said three pounds three

three shillings so due and payable as aforesaid, then remained and was in arrear and unpaid to him the said F. A. to wit, at, &c.; and this, &c.; wherefore, &c.; and a return of the said goods and chattels, together with his damages, according to the form of the statute in such case made and provided, to be adjudged to him: And for further avowry in this behalf, he the said F. A. by leave of, &c. according to, &c. well avowed the taking, &c. &c. [this avowry exactly the same as the first, only make it to pay the rent "quarterly" instead of "half yearly"]: And for further avowry in this behalf, he the said Francis, by leave of, &c. according to, &c. well avowed the taking of the said goods and chattels in the said declaration mentioned, in the said dwelling-house in which, &c. and justly, &c.; because the said A. O. for a long space of time, to wit, for the space of half a year next before and ending on the feast of , and from thence until and at the said time when, &c. held and enjoyed the said dwelling-house in which, &c. with the appurtenances, under a demise thereof thentofore made by the said F. A. to him the said A. O. at and under the yearly rent of six pounds six shillings, payable half yearly by even and equal portions, and during all that time held and enjoyed the same of the said F. A. by virtue of the said demise, as his tenant thereof, and that because a large sum of money, to wit, the sum of three pounds three shillings of the rent aforesaid, due and payable from the said A. O. to the said F. A. for a long time, to wit, for the space of half a year of the said term, ending on the feast of on that day, and from thence until and at the said time when, &c. was in arrear and unpaid to the said F. A. he the said F. A. well avowed the taking of the said goods and chattels in the said declaration mentioned, in the said dwelling-house in which, &c. and justly, &c. as for and in the name of a distress for the said rent so due and payable in arrear and unpaid as aforesaid: And the said F. A. further said, that the said three pounds three shillings of the rent aforesaid then remained and was in arrear and unpaid to him the said F. A. to wit, at, &c.; and this, &c.; wherefore, &c. and a return, &c. [There was another avowry upon a demise made by himself, only the plaintiff in replevin for rent payable "quarterly" instead of "half yearly," being the like difference as between the first and second avowries], and upon this the said F. A. prayed that the said A. O. might plead in bar of the said several avowries of him the said F. A.; and thereupon a day is given to the said A. O. for him the said A. O. to plead in bar to the said several avowries on , in the nineteenth year of our reign, wherefore, &c. the same day was given to the said F. A. &c.; at which day, before us at Westminster, came the said F. A. by his attorney aforesaid, and offered himself against the said A. O. in the plea aforesaid; but the said A. O. although solemnly called, did not come, but made default, nor did he further prosecute his said suit against the said F. A.; therefore it was considered that the said F. A. should go thereof without day, &c. and that the said A. O. and his pledges to prosecute should be in mercy, &c. and that

2d Avowry under a demise to pay the rent quarterly.

3d Avowry, upon a demise by the avowant alone, for rent in arrear payable half-yearly.

4th Avowry like the 2d, only by the avowant only.

Day is given to plead to the avowry.

Default.

Judgment de retorno habendo.

Scire facias against the bail, replevin in the common pleas, where the proceedings had been removed by *recordari facias loquelam*, out of the county court, and after wards the sheriff returned *et obligati* to a writ *retorno habendo* upon a judgment for want of a declaration in the common pleas to shew why those goods should not be taken in lieu of those eloigned.

GEORGE the Third, by the grace of, &c. To the sheriff of Hampshire, greeting: Whereas Richard Rogers and David Rogers heretofore, to wit, on, &c. in the sixteenth year of our reign, came before J. W. esquire, late sheriff of our county of Southampton, out of the county court of the said J. W. and made their complaint to him so then being such sheriff as aforesaid, of the said county, against H. S. G. esquire, in a plea of taking and unjustly detaining the goods and chattels of them the said R. R. and D. R. at T. to wit, in the said county, that is to say, a parcel of wheat in the straw, a parcel of barley in the straw, a waggon, &c. against sureties and pledges, and prayed the said J. W. so being such sheriff of the county as aforesaid, that the goods and chattels aforesaid might be replevied and delivered to them the said R. R. and D. R. and thereupon the said R. R. and D. R., according to the form of the statute in such case made and provided, afterwards, to wit, on, &c. in the sixteenth year aforesaid, found pledges for prosecuting their said plaint, and for making a return of the said goods and chattels, if a return thereof should be adjudged, that is to say, J. F. of, &c. gentleman, G. H. of, &c. farmer, and W. P. of, &c. gentleman; and thereupon, at the request of the said R. R. and D. R. to the said J. W. so then being such sheriff of the said county as aforesaid, the said goods and chattels were replevied, and delivered to the said R. R. and D. R., which plaint to the sheriff with all things touching the same, afterwards, to wit, at the county court of the said J. W. sheriff of the county aforesaid, held at the castle of Winchester, in and for the county of Southampton aforesaid, on, &c. in the year of our reign, before, &c. then free suitors of the said court, in the names of the said R. R. and D. R. were returned by the said J. W. the then sheriff of the said county; and afterwards, to wit, at the county court of the said J. W. sheriff of the county aforesaid, held at the castle of Winchester, in and for the county of S. aforesaid, on, &c. in the year of our reign, before , then free suitors of the said court, the said then sheriff in his full county court, by virtue of our writ of *recordari facias loquelam* issuing out of our high court of chancery at Westminster to him directed, and returnable before our said justices of the bench aforesaid here, to wit, at Westminster aforesaid, caused the said plaint between the said R. R. and D. R. and the said H. S. G. of the said taking and unjustly detaining the goods and chattels of the said R. R. and D. R. against sureties and pledges, &c. to be recorded, the said record of which said plaint the said then sheriff had by virtue and according to the tenor of our said writ, under his seal and the seals of four lawful knights of his said county, of such as were present at the said record, which said sheriff then also returned that he had by virtue of the said writ prefixed the same day to the parties that they might be there ready to proceed in the said plaint as should be just, execution of which writ was done at the petition of the said H. S. G.

(a) See *scire facias*, proceedings in, *post*.

as by the said writ of *recordari facias loquelam* remaining in our court of the bench at Westminster, reference being thereto had, may appear, and which plaint with all things touching the same, are now remaining in our court before our justices of the bench at Westminster †: And whereas the said H. S. G. was duly summoned by the said J. W. the sheriff of our said county, to be in our said court before our justices at the return of the said writ of *recordari facias loquelam*, to answer to the said R. R. and D. R. in the plaint aforesaid, to wit, of a plea wherefore he took the goods and chattels of them the said R. R. and D. R. that is to say, the said parcel of wheat, &c. of the said R. R. and D. R. and them unjustly detained against sureties and pledges, &c. as it was said; and whereupon the said H. S. G. in Hilary term in the seventeenth year of our reign, duly offered himself the fourth day against the said R. R. and D. R. in the plea aforesaid, and the said R. R. and D. R. afterwards, to wit, in the same Hilary term, in the seventeenth year aforesaid, although solemnly demanded, did not, nor did either of them come, but made default, wherefore afterwards, to wit, in the said Hilary term, in the seventeenth year aforesaid, it was considered in the same court of the bench that the said H. S. G. should go thereof without day, &c. and that the said R. R. and D. R. and their pledges to prosecute be in mercy, &c. and that the said H. S. G. should have a return of the goods and chattels aforesaid, &c. as by the record thereof now remaining in the said court of the bench at Westminster may appear: And whereas we lately commanded the said J. W. the sheriff of the county aforesaid by our writ, that the aforesaid goods and chattels to the aforesaid H. S. G. without delay he should cause to be returned, and them at the plaint of the aforesaid R. R. and D. R. he should deliver, not without our writ, which should make express mention of the aforesaid judgment, and how he should execute that our command he should make appear to our justices at Westminster in eight days of the Purification of the Blessed Virgin Mary, and that he should have there then that writ, and he at that day certified to our said justices in the said writ named, that before his receiving the said writ the goods and chattels in the said writ mentioned, whereby the said R. R. and D. R. eligned to places to him the said sheriff unknown, so that he was not able to make return thereof to the said H. S. G. in the said writ named, as by the said writ he the said then sheriff was commanded, as by the said writ and return thereof affiled in our said court, before our said H. S. G. that although judgment be given therein, yet justices of the bench at Westminster aforesaid, it appears to us of record, and now we have received information in our said court of the bench at Westminster aforesaid, on the part of the execution as to the return of the said goods and chattels remains to be done to the said H. S. G.; wherefore the said H. S. G. hath besought to provide him a proper remedy in this case, and we be-

(a) In the county court below, removed by *re. fa. lo.*

ing willing that what is just should be done therein, do command you that by honest and lawful men of your bailiwick you make it known to the said J. F. H. H. and W. P. that they be before our justices at Westminster, to shew if they have, or if either of them hath or knoweth of any thing to say for themselves or himself, why the goods and chattels of the said J. F. H. H. and W. P. to the value of the said goods and chattels so replevied and delivered to the said R. R. and D. R. should not be delivered to the said H. S. G. if it shall seem expedient for them so to do, and have you there the names of those by whom you shall make it known to them, and this writ. Witnesses, &c.

J. MORGAN.

Scire facias against bail in replevin upon a judgment in the common pleas *de re. terne habendo* for want of plea to the avowry, after the sheriffs return *longat* it to shew why their own goods should not be taken in lieu of those eloigned.

GEORGE the Third, [as in the last precedent to this mark †, then proceed as follows]: And whereas the said J. R. was duly summoned by the said J. B. and H. K. then sheriff of the said county of Middlesex, to be in our said court before our justices of the bench at Westminster at the return of the said writ of *recordari facias loquelam*, to answer the said B. G. R. in the plaint aforesaid, that is to say, of a plea wherefore he took the aforesaid goods and chattels of the said B. G. R. and unjustly detained the same against sureties and pledges, &c.: And whereas the said J. R. afterwards, to wit, in the said Easter term, in the nineteenth year aforesaid, duly offered himself the fourth day against the said B. G. R. in the plea of the aforesaid plaint, and thereupon the said B. G. R. in the said Easter term, in the nineteenth year aforesaid, in our court before our justices of the bench at Westminster, declared against the said J. R. in the said plea of the plaint aforesaid; and thereupon the said J. R. in our court before our justices of the bench at Westminster, the same Easter term, in the nineteenth year aforesaid, as bailiff of T. G. and J. G. for a certain reason by him alleged in the said court before our justices of the bench at Westminster, well acknowledged the taking of the goods and chattels in the place in which, &c. to be just, for and in the name of a distress for fifty pounds rent, due and in arrear from the said B. G. R. to the said T. G. and J. G. for one year, ending on the feast day of , in the nineteenth year aforesaid, for the messuage or dwelling-house in which the taking of the aforesaid goods and chattels was done, with the appurtenances, and theretofore demised by them to the said B. G. R.; and afterwards, in the same Easter term, in the nineteenth year aforesaid, such proceedings were had in our said court before our justices of the bench at Westminster, in the plea aforesaid, that the said B. G. R. although solemnly called to plead in bar to the said cognizance of the said J. R. did not come, but made default; therefore it is considered by the said court by the said justices of the bench at Westminster, that the said J. R. go thereof without day, and that the said B. G. R. and his pledges to prosecute should be amerced, and that the said J. R. should have a return of the goods and chattels aforesaid, as by the record thereof now remaining in our said court

court of the bench at Westminster aforesaid, may appear: And whereas we lately by our writ of *retorno habendo* commanded you, &c. [as in the last precedent *mutatis mutandis* to the end.]

V. LAWES.

The replevin in this case being by plaint, and not by writ, I am of opinion, that the defendant is not in the first instance entitled to a writ against the goods of the bail, but that he must sue out such *scire facias* as I have drawn, the intent of which is to bring the pledges into court, and give them an opportunity of contesting why the defendant should have a return of their beasts. If the pledges can-

not shew cause on *scire facias* being returned, or make default, you will be entitled to have a writ to have a return of the goods of the pledges upon the sheriff's return of *nihil* to this writ, you will by statute of Westminster 2. be entitled to a *scire facias* or action against the late sheriff for taking insufficient pledges.

V. LAWES.

Middlesex, to wit. It was commanded to the sheriff of Middlesex, that whereas B. G. R. heretofore, that is to say, on in the nineteenth year of the reign of the lord the now king, had come before J. B. esquire, and H. K. esquire, then late sheriffs of the county of Middlesex; out of the county court of the said J. B. and H. K. and had made his complaint to them, so being such sheriffs as aforesaid of the said county of Middlesex, against J. R. in a plea of taking and unjustly detaining the goods and chattels of him the said B. G. R. at the parish of , in the said county of Middlesex, that is to say, a bath stove, &c. &c. [recite the *scire facias* throughout, then proceed thus], at which day, before the justices of our lord the king of the bench here, comes the said J. R. by A. B. his attorney, and the sheriff of the said county of Middlesex, to wit, T. W. esquire, and E. P. esquire, return to the said justices here, that by virtue of the said writ to him directed, he had by H. F. and R. H. honest and lawful men of his bailiwick, given notice to the said J. W. and E. W. to appear before the king's justices at the day and place in the said writ mentioned, to shew cause, as by the said writ they were required, and the said J. R. on the fourth day offered himself against the said J. W. and E. W. in the plea aforesaid, and the said J. W. and E. W. although solemnly demanded, do not nor doth either of them come, but do and each of them doth make default; therefore it is considered by the justices here, that the goods and chattels of the said J. W. and E. W. to the value of the said goods and chattels so replevied and delivered to the said B. G. R. be delivered to the said J. R. &c.

Judgment against the bail in replevin *de bonis propriis* upon default of appearance after sheriff's return of *scire facias* upon the writ of *scire facias* to shew why their principal, having cloigned the goods replevied to him, their own goods should not be taken in lieu thereof.

George the Third, by the grace of God, &c. To the sheriff of Middlesex, greeting: Whereas heretofore, to wit, in Easter term, in the nineteenth year of our reign, one J. R. having been theretofore summoned to be in our court before the justices of the bench at Westminster, to answer unto B. G. R. in a plea of a certain plaint which had been theretofore made by the said B. G. R. to the then sheriff of our county of Middlesex aforesaid, against the

Writ of execution the above judgment.

REPLEVIN.—WRIT OF EXECUTION.

said J. R. of taking and justly detaining the goods and chattels of him
 the said B. G. R. at the parish of , in the said count of M. that is
 to say, a bath stove, &c., against pledges and sureties, and on which
 said plaint; on the said B. G. R. finding pledges for prosecuting his
 said plaint, and for making a return of the said goods and chattels,
 if a return of the same should be adjudged; to wit, J. W. of ,
 in the county of Middlesex, gentleman, and E. W. of , in
 broker, the said goods and chattels at the request of the said
 G. R. had been replevied and delivered to him; and which plaint,
 with all things touching the same, had also been duly had into our
 said court, before our justices of the bench at Westminster, by
 virtue of our writ of *recordari facias loquelam*, returnable be-
 fore our said justices of the bench, at a certain day then past;
 the said B. G. R. in our said court, before our justices of
 the bench at Westminster, declared against the said J. R. in a
 plea of the said plaint, to wit, of a plea wherefore he the said J. R.
 took the aforesaid goods and chattels of the aforesaid B. G. R. and
 unjustly detained the same against sureties and pledges, &c.; and
 thereupon the said J. R. in the same Easter term, in the nine-
 teenth year aforesaid, as bailiff of, &c. [as in the *scire facias* from
 this mark † to this mark †, then proceed as follows], as appears
 to us of record; and because the said goods and chattels could not
 be returned to the said J. R. in execution of the judgment afore-
 said, by reason that the same were eloigned and removed by the said
 B. G. R. to places to you unknown, as you yourself certified to
 our justices of the bench at a certain day now past, we lately
 commanded to you, that by honest and lawful men of your baili-
 wick you should make it known to the said J. W. and E. W. that
 they should be before our justices at Westminster, in eight days of
 St. Hilary now last, to shew if they had or knew, or if either of
 them had or knew of any thing to say for himself or themselves,
 why the goods and cattels of the said J. W. and E. W. to the
 value of the said goods and chattels so replevied and delivered to
 the said B. G. R. should not be delivered to the said J. R. if it
 should seem expedient to them so to do: And whereas the said J. R.
 at that day came into our said court before our justices of the
 bench at Westminster, by A. B. his attorney, and you thereupon
 returned to our said justices, that by H. F. and R. H. honest and
 lawful men of your bailiwick you had given notice to the said J. W.
 and E. W. to appear before our said justices at the day and place
 last aforesaid, to shew cause, as by the said writ they were requir-
 ed; and the said J. R. in this said Hilary term, to wit, on the fourth
 day, offered himself against the said J. W. and E. W. in the plea
 aforesaid, and the said J. W. and E. W. although solemnly called,
 did not, nor did either of them come, but made, and each of them
 did make default; therefore it was considered by our said justices
 there, that the goods and chattels of them the said J. W. and E. W.
 to the value of the said goods and chattels so replevied and de-
 livered to the said B. G. R. as aforesaid, should be delivered to
 the said J. R. as appears to us of record; now therefore we com-
 mand

mand you, that by the oath of twelve good and lawful men of your bailiwick you diligently enquire how much the said goods and chattels so replevied and delivered to the said B. G. R. as aforesaid were worth, according to the true value of the same at the time of the replevying and delivery thereof as aforesaid, and that the goods and chattels of the said J. W. and E. W. in your bailiwick, to the value of the said goods and chattels so replevied and delivered to the said B. G. R. as aforesaid, you cause to be delivered to the said J. R. and how you shall execute this our writ you make appear to our justices of the bench at Westminster aforesaid, in fifteen days from the day of Easter, under your seal and the seals of those by whose oath you shall take that inquisition, and have you there the names of those by whose oath you shall take that inquisition, and this our writ. **Witness, &c. V. LAWES.**

I have drawn the writ of execution in strict conformity with the judgment, though I cannot in any of the books of Entries find one like it. According to *Officina Brevium* 326, and *Rast.* 569, the *scire facias* in this case might have been, "to shew cause why the value of the goods replevied should not be made of the goods of the bail;" or according to *Fortes.* 331. "why so many goods, or the value of them, should not be tendered to the plaintiff." In either of these cases a writ to enquire the value of the goods distrained and *scire facias* for the same might have been issued. But none of these cases do, in my opinion, any

way impeach the propriety of the present proceedings; on the contrary, they are warranted not only by authorities equally respectable as the former, 2. *Inst.* 340. *Thesau. Brev.* 274. and *Bro. Abr.* 218 .b. but also the very words of the statute of Wm. 2. under which they have been had, although this statute says, that if any one takes pledges any other way than as thereby directed, he shall answer the value of the beasts. Yet it enacts, that the lord who made the distress shall recover by writ, and that the defendant restore so many beasts or cattle. **V. LAWES.**

CUMBERLAND, to wit. John Railton, heretofore in the county court of the sheriff of the county aforesaid, held at, &c. in and for the said county on, &c. before suitors of the said court, complains against Isaac Brown in a plea of taking and unjustly detaining the cattle of the said J. R. against sureties and pledges; which plea, at the petition of the said J. R. was had here on this day, that is to say, *from the day of Saint Michael, in three weeks in this same term*, by his attorney's writ of *recordari facias loquelam*, at which day come here as well the said J. R. by R. H. his attorney, as the said J. B. by L. C. his attorney: And hereupon the said J. R. complains against the said J. B. of the plea aforesaid, to wit, for that the said J. B. on, &c. at the parish of, &c. in the county aforesaid, in a certain place there called, &c. took the cattle following, to wit, *five cows and one beifer* of the said J. R. and unjustly detained the same against sureties and pledges until, &c.; whereupon the said J. R. says that he is injured, and hath sustained damage to the value of twenty pounds; and therefore he brings his suit, &c.

Record, setting forth the complaint in the county court, and removed by *re. su. la.*

SOMER-

SOMERSETSHIRE, to wit. J. P. J. W. and W. W. were summoned to answer to R. G. esquire, of a plea wherefore they took the cattle of the said R. and unjustly detained them against sureties and pledges, &c. and thereupon the said R. by J. N. his attorney, complains, that the said defendants on, &c. at the parish of, &c. in the county aforesaid, in a certain place there called, &c. took the cattle, to wit, *seven oxen, one heifer, and four cows* of him the said R. and unjustly detained the same against sureties and pledges until, &c. whereupon the said R. saith he is injured, and hath sustained damage to the value of one hundred and fifty pounds; and therefore he brings his suit, &c.

Shew the place of taking, because it may be brought in issue without arguing the merits.

MIDDLESEX, to wit. W. S. late of, &c. was summoned to answer E. M. widow, of a plea wherefore he took the goods and chattels of the said E. and them unjustly detained against sureties and pledges until, &c. and thereupon the said E. by J. J. her attorney, complains; that the said W. on the day of in the year of the reign of our sovereign lord the now king, at, &c. in the county aforesaid, in the dwelling-house of the said E. there took the goods and chattels following, to wit, [set forth the goods] of the said E. and them unjustly detained against gages and pledges until, &c. wherefore the said E. saith that she is injured, and hath sustained damages to the value of forty pounds; and thereupon she brings her suit, &c.

Declarations in B. R. in replevin are the same as the C. P. for they are supposed to be originals; and all the process in replevin in B. R. are returnable *ubique*, &c.

If the declaration is for cattle, and goods, and chattels, they say, wherefore he took the cattle, goods, and chattels; and if it be for *birds or ferrets*, insert those words also.

A. C. complains of W. J. in a plea of taking and unjustly detaining of the goods and chattels of the said C. against gages and pledges, &c. and thereupon the said C. by J. J. his attorney, complains, that the said J. on, &c. at, &c. in certain places there hereafter particularly mentioned, took the goods and chattels of the said C. to wit, in a certain part thereof, &c. aforesaid, the part next the gate, ten cart loads of wheat in the straw, in a certain close there called the rick yard, twenty cart loads of wheat in the straw, ten cart loads of pease in the straw, ten cart loads of beans in the straw, and in a certain other part there called the part adjoining the gatehouse, five cart loads of pease in the straw, and five cart loads of oats in the straw of the said A. there within the parish aforesaid, and unjustly detained the same against gages and pledges until, &c. wherefore the said A. saith he is injured, and hath sustained damage to the value of twenty pounds; and therefore he brings suit, &c. Pledges, &c.

THE

IN THE MANOR OF BINGLEY, to wit. S. M. spinster, was summoned to answer to T. W. in a plea, wherefore she took three pigs of the said T. and them unjustly detained against sureties and pledges until, &c. and thereupon the said T. by F. S. his attorney, complains; that the said S. on, &c. at Bingley aforesaid, at a certain place there called and known by the name of Grose Green, and within the jurisdiction of this court, took three pigs, that is to say, three sows of the said T. and them unjustly detained against sureties and pledges until, &c. wherefore the said T. saith he is injured, and hath sustained damage to the value of thirty-nine pounds eleven shillings; and therefore he brings his suit, &c. Pledges, &c.

HENSON, &c. } — to wit. And the said John, in his own pro-
at the suit of } per person, comes and defends the wrong and in-
 CAMMERLY. } jury, &c. and says, that this court here ought not
 to take, nor will take cognizance of the aforesaid plea, because
 he says that the said John, long before the suing forth the original writ of the said Thomas, &c. at the said time of suing forth the same was, and from thence hitherto hath been, and yet is an attorney of the court of the lord the king of the bench, to wit, at Westminster aforesaid, in the county of Middlesex aforesaid; and that he doth prosecute and defend many pleas and suits, and during all the time aforesaid hath prosecuted and defended many pleas and suits for many true and faithful subjects of our said lord the king in the said court of the bench as their attorney; and the said John says that he and all other attorneys of the said court of the bench aforesaid, prosecuting and defending suits and pleas for their clients in the said court of the bench, by an ancient and laudable custom used and approved of according to the laws and customs of this realm, and the liberties and privileges of the said court of the bench aforesaid, ought to be free and exempt from being compelled against their wills, and have not, nor have any of them at any time or times hitherto been used or accustomed to be compelled to answer any pleas or plaint in any actions personal (pleas of freehold, and of felony, and appeals only excepted) before any justices or ministers of the lord the king, or other judges whatsoever, in any court (except before the justices of the lord the king of the bench aforesaid), by bill filed in the said court against such attorney or attornies as present here in court; and this he is ready to verify; wherefore he prays judgment if he ought to be compelled to answer to the said Thomas here in court to the said plea, &c.

Plea of privilege in abatement by an attorney of C. B.

I N D E X.

GENERAL DIVISIONS OR HEADS, AND LEADING TITLES IN THE CIVIL DIVISION.

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A N A L Y S I S.

I. AVOWRIES AND COGNIZANCES (AND PLEAS IN BAR to, &c.) DAMAGE FEASANT.

By FREEHOLDERS.
COPYHOLDERS.

II. AVOWRIES, &c. UNDER DEMISES.

III. AVOWRIES, &c. BY COMMONERS.

IV. FOR FINES AND AMERCIAMENTS.

V. UNDER JUDGMENTS.

VI. FOR RENTS, SERVICES AND CUSTOMS, AND SALVAGE OF WRECKS, AND FOR DISTRESSES.

VII. { WRITS. DECLARATIONS. PROCESS, AND OTHER DETACHED PROCEEDINGS. JUDGMENTS.

I. Avowries and Cognizances by Freeholders and Copyholders, Damage Feasant, and Pleas in Bar, &c. to.

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1. DECLARATION for taking sheep; COGNIZANCE as bailiff, that the *locus in quo* was the *freehold* of A. H. and that he took sheep, *damage feasant* therein; 2d and 3d
3. cognizance; PLEA in bar to 1st cognizance, that A. H. *demised* premises from year to year to one J. M. and that plaintiff holds *locus in quo* under a demise from
5. J. M.; plea to 2d and 3d cognizances; REPLICATION to *all* the pleas; traversing the continuance of
6. the term in J. M. to the time when, &c.; REJOINDER, traversing the surrender up of premises amongst *other* things demised to A. H.; demurrer to the rejoinder.
7. AVOWRY and cognizance by one *joint tenant* in his own right, and as *bailiff to the other tenants*, to the owner of the fee from year to year, so long as both pleased; that he took the two waggons in his close incumbering the same, and covering and spoiling the grass, as a distress damage feasant; 2d Avowry, stating it to be his own demise, and omitting his co-tenant; PLEA in bar, that plaintiff sent his servants, horses, and waggons to take the *tithe* growing in *locus in quo*, being farmer of the same for the term of ten years, under the heir at law of a person to whom the *tithe* had been granted for three lives by the bishop of Ely, the owner in fee in right of his bishopric; the whole title set out; plea to 2d avowry

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9. similar, omitting the other co-tenant; REPLICATION to the plea to the first avowry as to *one* of the waggons, admitting the plea, but that after the waggon was loaded it was *detained an unreasonable time*; they therefore took it, *doing damage* to the grass and soil; as to the *other* waggon, that it was sent *under a pretence*, and that the servants *drove it wantonly* amongst the barley set out for tithes; replication to the plea to 2d avowry; as to the first waggon after it was loaded, it was detained by the servants an unreasonable length of time; and *after a reasonable length of time had elapsed*, defendant took it as a distress for the damage; to plea to 2d avowry as to the other waggon, that it was in the close under a pretence, and of plaintiff's *own wrong*; REJOINDER to the last replication, *de injuria sui propria* to the others, and issue thereon.
- 13, 14. AVOWRY, damage feasant in his *freehold*; PLEA in bar that T. M. was seised in fee, and demised to W. L. and the plaintiff for their lives; prescription of common; REPLICATION, that it is his freehold, traversing *prescription* and issue.
15. AVOWRY to declaration in replevin by freeholder, damage feasant; plea of property *in a third person*;
16. plea in bar to the avowry, that the cattle escaped from a close (where they were depasturing, as they lawfully might do) adjoining to *locus in quo*, through defect of fences, which defendant ought to repair; and issue on the traverse of property in third person;
17. replication, that plaintiff himself *pulled down the fences*, and *made gaps* through which cattle escaped; rejoinder and issue; surrejoinder; plea in abatement to the declaration, that the taking was in another place; traversing the place; and issue on the traverse.
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8. Cognizance as bailiff of earl of N. who was seised of a messuage, and goods were damage feasant taking up room. Cognizance, as bailiff of the earl of Nottingham, as freeholder, for taking cattle, damage feasant; plea in bar, that before the said earl had any thing in the place in which, &c. queen Elizabeth was seised in fee in right of her dutchy of Lancaster, and granted, by letters patent, a market and two fairs to be held therein, to the corporation of Daventry; that the plaintiff bought the sheep in question at one of the fairs, and paid toll for it, and had it there when the defendant seized it; general demurrer and joinder.

Lill. Ent 376. 377.

- Plea in abatement to the declaration in replevin for distraining cattle, and for a return; the defendants, as bailiffs of, &c. a freeholder, acknowledged the taking in the *locus in quo*, damage feasant; replication; and issue on the property,

Ibid. 358.
Similar

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Similar plea in abatement, and for a return; one of defendants avows, and the other, as his bailiff, makes cognizance for damage feasant in avowants freehold; replication, taking issue on the traverse to the place,

Lill. Ent. 378

Plea of property in a stranger to a declaration in B. R. for taking cattle, and for a return, make cognizance as bailiffs of A. and B. for damage feasant in their freehold; replication, that the property was in the plaintiff as in the declaration and issue,

Ibid 358.

Avowry and cognizance for damage feasant as bailiff, the lord of the freehold; bar, that the *locus in quo* is copyhold, held of the manor of Bushey, &c.; that the defendant, being lord of the manor, granted it to the plaintiff in fee according, &c. and he being seised put in his cattle, and the defendant distrained them; replication, that the land is held of the manor of B grant by copy, yearly value, the fine, forfeiture for non-payment, protesting that the fine is unreasonable; pleads a custom to pay a year's value only, which he offered to pay; demurrer; joinder; judgment for plaintiff; inquiry awarded,

Hunt on Dist. and Rep. 264 to 527.

Avowry, for damage feasant in defendant's freehold,

Ibid. 275.

Avowry, for damage feasant in his freehold; bar, that H. M. was seised in fee, and demised to W. L. and the plaintiff for their lives; the entry of the plaintiff, prescription for common; replication, that it is his freehold, and traverses the prescription; issue on the traverse,

Ibid. 285.

Plea in bar to an avowry, that the plaintiff tendered to the defendant sufficient amends for the damage feasant, defendant protesting that the six shillings and eightpence was not sufficient amends; for plea, denies the tender; plaintiff rejoins, that he did tender the six shillings and eightpence, and issue,

Ibid. 286.

An avowry, where the defendant traverseth the place, and saith that there are several places known by the same name, but that they are differently to be described, they having different addition; plea, that the plaintiff when, &c. and long before was possessed of a close adjoining to the place in which, &c. and that R. L. principal defendant, and all those, &c. time out of mind were used to repair the fences in *locus in quo*, &c. which divided plaintiff's close; that those fences, before the time when, &c. were out of repair, by reason whereof plaintiff's cattle escaped into the *locus in quo*; and before the plaintiff had or could have any notice thereof, defendants took the cattle; plaintiff prays judgment, and his damages,

Ibid. 287.

Avowry, for rent accrued due in the lifetime of plaintiff's intestate, and from plaintiff as administratrix since,

1. H. Bl. Rep. 465

Replevin, for taking plaintiff's cow; plea, that sir G. W. seised in fee in *locus in quo*, took the cattle, damage feasant; replication, that sir G. W. the freeholder, was seised in fee, and demised to T. S. for three lives; T. S. died, and

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- T. B. entered as occupant, and made a lease for one year unto the plaintiff *per quod*; demurrer, cause that he prays judgment and damages, but does not pray a return in his replication, - - - - - Holt's Rep. 539.
- The plaintiff rejoins, that she put in her cattle till the defendant took them of his own wrong, and traverses the custom to inclose upon which traverse issue is joined; verdict for the plaintiff; a new trial ordered for the misdirection of the judge, - - - - - 1. Wils. Rep. 269. b.
- Avowry, that defendants were owners and occupiers of certain messuages, and prescribe for common in the *locus in quo*, and avow damage feasant; this is a bad prescription, - - - - - *Ibid.* 258.
- Avowry *in proprio jure*, and cognizance as bailiff of the earl of Essex, the *locus in quo*, &c. the freehold of defendant and earl took the cattle, damage feasant; plea in bar, *locus in quo*, &c. parcel of the manor of B. whereof defendant and the earl of Essex are lords, and granted the *locus in quo*, &c. to plaintiff, who was admitted tenant; replication, confessing that the *locus in quo*, &c. parcel of the manor of B. that said earl and defendant were lords granted to the plaintiff, who was admitted tenant; but the lands of the value of twenty-eight pounds *per annum* and a fine of thirty-five pounds was assessed on the plaintiff; fine reasonable, whereby forfeiture defendant and the earl entered, and were seised in fee cattle, damage feasant; rejoinder, protesting fine unreasonable; custom that the fine should not exceed a year's value; premises worth twenty-eight pounds *per annum*, which plaintiff tendered, and defendant refused; demurrer thereto, causes that the value of the land is in estimation, and the custom uncertain; joinder; continuance; judgment for the plaintiff; inquiry awarded; the return, - - - - - 2. R. Pr. C. P. 358.
- Plea of property in a stranger to a declaration in B. R. for taking cattle on a highway; replication, that property was in plaintiff as alledged in the declaration, and issue, jurata, &c. - - - - - *Ibid.* 357.
- The defendants plead property in a stranger to a declaration in B. C. for taking cattle; and for a return make cognizance as bailiffs of A. and B. for damage feasant in their freehold; replication, that the property was in the plaintiff as alledged in the declaration, and issue, - - - - - Lill. Ent. 358.
- Bar to avowry by demise of defendant, and traverse of seisin in the avowry, - - - - - Tho. Ent. 266.
- Cognizance, as bailiff of the tenant of the freehold of the *locus in quo*, for damage feasant; plea in bar, that the *locus in quo* is a common, containing so many acres, and situate within the parish of H. within which plaintiff was seised in fee of a messuage and farm, with prescriptive right of common there from twenty-fifth of March to first of November in each year, and that the time when, &c. was within that time, in which plaintiff had put his cattle to feed, when defendant wrongfully seized them; replication, repeating

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the right of freehold in W. K.; traverses the right of common set up by defendant; general demurrer to replication and joinder,

Pl. Ass. 471.

Avowry, that *locus in quo* is defendant's freehold, and that he seized the cattle, damage feasant; plea in bar, that R. E. was seised in fee of a close called the Bakelands, and demised same to plaintiff so long as both parties should please; that this close adjoins to the fields in which, &c. and they to each other; and that from time out of mind the owners and occupiers of *locus in quo* adjoining to plaintiff's field was bound to repair the fence dividing them; but being out of repair at the said time when, &c. the cattle escaped through, and committed the injury; rejoinder, protesting against the obligation to repair set out in the replication; traverses the hedges being out of repair; surrejoinder, taking issue on the traverse,

Ibid. 475.

Avowry by freeholder, that he took the cattle, damage feasant; plea in bar, that T. N. was seised in fee of a messuage and land in the parish of B. and demised the same to W. L. and K. his wife for their lives, remainder to plaintiff for life; that L. and wife died, when plaintiff became seised, and prescribes for right of common in the *locus in quo* in right of his said messuage and lands, &c. and alledges that defendant, *de injuria*, &c. seized his cattle there; replication, reasserting the right to the freehold, and traversing the prescription; rejoinder, taking issue on the traverse,

Lill. Ent. 365.

Cognizance, as bailiff of the lord of the manor in which a great field in *locus in quo* situate, where many of the tenants of the manor had common of pasture from the first Sunday after the tenth of August till the first Sunday after the second of February; that there was a custom, that after any one shall have carried off hay mown in that field, and before the first Sunday after the tenth of August, the lord of the manor might distrain cattle found there, for damage feasant; and that the plaintiff's cattle were there in breach of the said custom; whereupon the defendant, as bailiff of the lord, distrained them, damage feasant; plea in bar, protesting against the custom; for plea says *locus in quo* was a field within his own manor of H. and that the defendant, *de injuria*, distrained his cattle there, traversing that the close was within the manor mentioned in the cognizance; replication, taking issue on the traverse,

Ibid. 366.

Avowry by freeholders for taking a gelding, damage feasant; plea in bar, protesting that the *locus in quo* was not defendant's freehold; says the plaintiff was seised of messuage and lands, and entitled to a prescription right of common in the *locus in quo* for horses levant and conchant in his tenement from the first Sunday after the tenth of August to the first Sunday after the second of February in each year, and on the seventh of September put the gelding in question to

- pasture in the *locus in quo*, when the defendant distrained him; replication, traversing the plaintiff's right of common as alledged; rejoinder, taking issue on the traverse, Lill Ent. 368.
- Cognizance as bailiff of the earl of Nottingham**, for damage feasant; bar to the cognizance, queen Elizabeth was seized in fee in right of her duchy of Lancaster, and granted two fairs to the bailiffs, &c. of the borough of Daventry, and that the plaintiff, at one of the said fairs, bought the said sheep, and paid toll for it, and had it in his custody until the defendant unjustly took it, &c.; demurrer and joinder, *cur. ad vult.* 3. L. Ra. 207. N. Ed.
- Cognizance as bailiffs**, 1. *Bro.* 304. 1. *San.* 347. 2. *San.* 320. *Ro. Ent.* 141. 2. *Ven.* 131. *Ra. Ent.* 561. As bailiff of husband and wife, *Ra. Ent.* 566. *Co. Ent.* 589, 596. 1. *Br.* 11. As bailiff of husband and wife in right of wife, *Ra. Ent.* 565.
- Plea by one defendant, *non cepit***; another makes cognizance as bailiff of dean and chapter of Gloucester, and that the dean and chapter were *seised in fee* of it, 2. *Lut.* 1131.
- Cognizance as bailiff of W. B. for damage feasant in his freehold**, 2. *Lut.* 1140. *Clif.* 655. and licence pleaded in bar.
- Avowry**, for damage feasant in the *freehold* of him and the earl of Essex, 3. *Lev.* 249.
- Avowry in right of the wife**, *Wi. Ent.* 820. 2. *San.* 195. *Her.* 591.
- Avowry in his own right**, and another makes cognizance as bailiff, *Tbo.* 264. *Wi. Ent.* 852, 868, 877, 886, 906, 909, 912, 933. *Mo. Int.* 303. 2. *San.* 283. *Br. R.* 341, 427. 2. *Ven.* 145, 224. *Ra. Ent.* 559, 565, 572. *Co. Ent.* 601. *Wilk.* 282. 3. *Br.* 276, 307. *Ajib.* 401. In right of his wife and in his own right, and another makes cognizance as his bailiff, *Vet. Int.* 242. *Upper B. P.* 93.
- Avowry in parcel of the *locus in quo***, *Vet. Int.* 45.
- For cattle taken in divers places**, *Co. Ent.* 585.
- Avowry by prior in right of the church**, *Ra. Ent.* 574.
- Avowry in his own right**, and makes cognizance as bailiff of another, 3. *Br.* 339.
- Avowry in his own right and of his wife**, and makes cognizance as bailiff of E. and S. his wife, *Ra. Ent.* 565. *Vet. Int.* 94. 1. *Br.* 17. *Her.* 692.
- Avowry in his own right and of his wife**, and makes cognizance as bailiff of E. *Vid.* 224.
- Avowry by one in right of his wife**, the other makes cognizance as bailiff, 2. *San.* 283. 2. *Ven.* 225.
- Avowry of cattle yet detained**, 1. *Bro.* 312. Of cattle taken, and many of them as yet detained, *Mo. Int.* 304. *Ra. Ent.* 567.
- Avowry**, but does not claim property in cattle as yet detained. Plaintiff has delivery, and defendant finds pledges to prosecute, *Mo. Int.* 317. *Upper B. P.* 91.
- Avowry of taking as well cattle in declaration mentioned as of other cattle replevied by the sheriff**, *Mo. Int.* 342. *Ra. Ent.* 565. *Vet. Int.* 94. *Upper B. P.* 93.
- Cognizance as bailiff**, who died after last continuance, *Mo. Int.* 308. *Tbo.* 2. *Her.* 636.
- Avowry of cattle taken in the messuage and lands**, driving and impounding them; plaintiff took them out of his possession, and he retook them from the plaintiff, *Mo. Int.* 327.

Avowry by defendant, and two others at the end of the avowry say that they are his servants, and come with him to distrain, *Ra. Ent.* 574. *Vet. Int.* 92, 556.

Plea, *ad id non*, justification by one in his own right, and the other as his tenant, *Ra. Ent.* 554.

Avowry by one for himself and the other, *P. 4. E. 3.* 26.

For horses harnessed drawing in a chariot, and goods, *Ra. Ent.* 566. *Vet. Ent.* 93.

For cattle taken damage feasant in common, *Ra. Ent.* 561.

Plea, that defendant took the cattle in a croft, and in driving them they escaped to the place in the declaration mentioned, from whence defendant took them afresh, *Ra. Ent.* 556. *Vet. Int.* 92.

Plea, that defendant came to distrain in another place, which plaintiff perceiving, drove cattle into the place in declaration named, where defendant took them afresh, *Ra. Ent.* 557. *Her.* 677.

Plea in bar to avowry, that *locus* was three closes, containing one hundred acres of land, *Mo. Int.* 317.

Plea in bar to avowry, that *locus* is called as well by name of C. as of N. 1. *Bro.* 308. *Mo. Int.* 343. *Co. Ent.* 602.

Avowry for damage feasant *in the freehold*; plea, that the place is the freehold of plaintiff, and not of defendant, *Pl. Gen.* 574.

Cognizance of taking cattle damage feasant, and traverses place of taking, *Clift.* 636, 644.

Plea, traversing the day of taking, and says that the place is called as well by the name of S. as of C. *Mo. Int.* 318.

Avowry, and traverse of place of taking, *Ro. Ent.* 405.

Avowry of taking on the twenty-third day *in his freehold*, but traverses taking on the twenty-second day, *Mo. Int.* 318.

Plea, that *locus* called B. contains, &c. and the barn and stable are parcel, *Co. Ent.* 585. 9 *Co.* 82.

Plea in bar to avowry, plaintiff says that *locus* contained three closes containing so many acres of land and meadow, *Ra. Ent.* 568. *Upper B. P.* 97. *Her.* 642.

Plea in bar, *non cepit* cattle, and issue, 1. *Bro. Met.* 312. *Mo. Int.* 325. 2. *Lut.* 1131. *Ra. Ent.* 575, 557. *Upper B. P.* 93, 110.

Plea in bar, as to part, *non cepit*; to residue *in alio loco*, and traverse place named in declaration; replication, that *locus* is called as well by E. as H.; rejoinder, that *locus* is named by name of H. only, and traverses that it is called as well by one name as the other, *Mo. Int.* 343. 2. *Er.* 88.

Cognizance of taking the estray within the manor, and detaining, &c. for plaintiff's refusing to pay for the pasture; replication of his own wrong, and traverses *seisin in manor of fee* at the time of the taking, *B. R.* 414.

Plea, dissent to R. P. and avows as bailiff, damage feasant, and traverses that *locus in quo* was parcel of the manor, *Br. R.* 224.

Plea in bar, that defendant was not bailiff to him for whom he makes cognizance, *Pl. Gen.* 591.

Cognizance as bailiffs, damage feasant, in lands of two joint-tenants seized in fee, 2. *San.* 320. For damage feasant in freehold, 1. *San.* 347.

Cognizance as bailiffs of F. lord of H. damage feasant; bar, that W. W. esq. was seized, and gave *lic nce*, and traverses that it was the soil and freehold of F. lord H. &c.; replication maintains the bar and issue, *Clift.* 655.

Plea in bar to avowry, that he took the cattle in the place in the count mentioned; *absque hoc*, that the same place is parcel of the ten acres of land specified in the avowry, *Pl. Gen.* 574.; plea in *abatement*, that the taking of the cattle was in another county, *Thef. Br.* 5.

Plea, that plaintiff by original impleaded them in C. B. of trespass, and leading away two horses, &c. and recovered forty shillings damages and fourteen pounds costs,

Cognizance as bailiff of W. damage feasant in N. in which W. was seised in fee, &c. and that king Hen. 8. seised of the manor of N. granted lands to K. in fee, from whom they descended to G. and A. his daughters; G.'s part descended to S. who was seised of moiety according to custom of manor, and to plaintiff (and he does not state that the daughters or S. were admitted); replication, protesting that lands are not customary, and that the king did not grant; for plea, that Hen. 8. was seised of lands in fee that descended to E. 6. who granted to W. from whom they descended to R. and from him to defendant, and pleads *fine and non claim*; demurrer thereto, *Wi. Ent.* 881.

Cognizance as bailiff of master and governor of hospital, &c. and that they were seised of *locus* in fee in right of the hospital, and that they, as bailiffs, took the cattle, damage feasant; demurrer; and for causes that consance does not shew how incorporated, but held good, 3. *Lev.* 105. that W. was seised of lands in fee, that descended to R. and defendant, as his bailiff, makes consance for damage feasant, *Wi. Ent.* 883.

Avowry, that E. 4. seised of the advowson and *locus*, &c. (parcel of the priory dissolved by statute 2. Hen. 5.) granted the advowson to dean and chapter of W. in fee, and defendants, as their bailiffs, make cognizance, damage feasant; demurrer, *Wi. Ent.* 860.

Cognizance as bailiff of M. damage feasant in his freehold; plea, that T. being seised of the manor, granted customary lands to J. deceased, and E. and M. his daughters, for their lives, and after death of J. entered and took plaintiff to *husband* by the custom of the manor first named in the copy, should have the land alone for life, second alone, then to the third; replication, protesting that the lands, at the time, &c. were not customary; for plea, acknowledges that T. granted as in the bar, but that after the grant sold to J. in fee, who levied a fine thereof that descended to the son, who levied another fine to his own use and that of his wife, avowant; demurrer, *Wi. Ent.* 812. Judgment for plaintiff, 9. *Co.* 104.

Cognizance in replevin, that dean and chapter of G. were seised in fee of the place where, &c. and the cattle, damage feasant; plea, that the dean and chapter were seised, &c. of the *locus*, and also of the manor of C. and the advowson of vicarage of C. and demised them to J. V. which manor (except certain parcels, &c. of) sir W. H. then had for term of years, *habendum* for ninety-nine years to commence by the manor after the said lease, and for the residue immediately; averment, that the things excepted were the said woods or ways (*voirs*) and the advowson. J. V. grants all his interest to plaintiff, and the lease to sir W. H. expired on a day certain, by which he was possessed; replication, that the demise to J. V. was with render of thirty-one pounds ten shillings and fourpence for the manor in the occupation of sir W. H. and for the residue nine pounds twelve shillings at the four usual feasts, and on condition of re-entry on non-payment of rent for the space of a month; general warrant of attorney by the dean and chapter to W. and H. to demand their rent, and to make entries for non-payment; demand of rent on a day certain, &c. and in the common road in the said wood, and re-entry on the days after non-payment; rejoinder, that he was ready, &c. to pay the rent, and traverse the demand, and issue taken on it by the rejoinder, and held well, 2. *Lut.* 1131. 1138.

Cognizance as bailiff of M. S. and E. S. infants, and M. B. their guardian, that the place where, &c. was parcel of the manor of C. and copyhold, and that he was *seised in fee* of the said manor, and that at a certain court, &c. granted the *locus*, &c. to the said infants, and their said guardian, and that they entered, &c. and for damage feasant, &c.; plea, that the father, by his will, made according to the statute, granted to the said J. and his heirs the place where, &c. and that he died seised, and descended to the infants, and that J. S. the guardian. by the will of the said M. demises the moiety, and being so, he justifies

justifies the putting in of his horses; replication, for that defendant confesses the grant to J. S. but says, that according to the custom, &c. it belonged to him to assign a guardian to the infant at a certain court by *locus*, &c. admitted and assigned the said M. B. to be guardian to the said infants, and then admitted the infants as heirs to their brother; demurrer and judgment for defendant, 2. *Lut.* 1138. *sed vide.*

Cognizance as bailiff of the countess of N. for damage feasant; plea, that queen Elizabeth was seised in fee in right of her dutchy of L. and by letters-patent under the great seal grant to bailiffs, &c. of D. two fairs in a year, that plaintiff at one of the said fairs, bought the said sheep, and paying the accustomed toll, and on this the said sheep being in his custody in the fair, the defendant unjustly took it; demurrer and judgment for plaintiff, 2. *Lut.* 1233.

That *locus in quo*, &c. is freehold of defendant, who avows damage feasant; plea in bar, that it is plaintiff's freehold, and not tenement of defendant, *Ra. Ent.* 561. 565. 568. 572. *Co. Ent.* 600. *Wilk.* 281. *Plo.* 269. *Up.* 90. 3. *Br.* 267. 39.

Avowry in lands, parcel of the manor, for cattle in the declaration, and others for damage feasant in freehold; plea in bar, that the manor whereof is plaintiff's freehold, and not defendant's, *Ra. Ent.* 565. *Vet. Int.* 94.

Cognizance as bailiff of J. damage feasant in the freehold; plea in bar, that E. being seised, gave plaintiff licence to put in his cattle; and traverses that *locus in quo*, &c. was the freehold of J. 1. *Co.* 63. *Ra. Ent.* 561. 567. *Co. Ent.* 609. 1. *Br.* 22. *Her.* 642. Similar cognizance, *Ra. Ent.* 561. 567. *Co.* 609. 1. *Br.* 22. *Her.* 642.

Cognizance, that defendant is seised of the manor, whereof, &c. in fee, and avows damage feasant. *Ra. Ent.* 560. *Vet. Intr.* 48. *Her.* 591. Similar cognizance by bailiff, *Ash.* 389. That defendant is seised, and took the lands, damage feasant, *Ra. Ent.* 559.

Plea, that defendant took the boat and nets in a water, parcel of the manor whereof plaintiff is seised in fee, damage feasant; replication, *de injuria propria*; and traverses that the water is parcel of the manor, 3. *Br.* 307.

That defendant took the hares coursing in the lands; plea in bar, that it belonged to plaintiff to course, by reason of his lands there, 2. *Inst.* 655.

Replevin against A. and B. who avow in ten acres of land annually allotted before mowing, between the tenants and occupiers of the whole meadow, by custom whereof A. has one acre, and B. another acre not severed, who took cattle; damage feasant; plea in bar; tender of amends, 3. *Br.* 308.

Avowry by *wicar*, for land, parcel of *glebe*, *Hob.* 16.

That defendant is lord of the moiety of the vill, whereof, &c. and that the vills did not intercommon, and that he took the cattle, damage feasant; plea in bar, that plaintiff is lord of the moiety of the vill, and that *locus* is several soil of plaintiff every year from feast-day to feast-day by prescription; replication, that plaintiff and defendant hold *locus*, being waste of the vill in the county of T. 3. *E.* 3. 37.

Avowry, as lord of three parts of the manor in severalty in his own right, and as bailiff of the fourth part in *severalty* in pasture, being several from feast-day to feast-day, and held in undivided parts, *Reg. Jur.* 35.

Avowry by one, and cognizance by another, as bailiff, damage feasant in freehold, *Co. Ent.* 601. *Plo.* 145. *Ash.* 401.

Avowry, E. seised of lands that descended to three daughters who took *by lands*, and were seised; plea in bar, that J. seised of lands that descended to D. who took *by husband* M. and demised to plaintiff, *Ra. Ent.* 567.

That E. was seised of lands that descended to defendant, who took cattle, damage feasant; plea in bar, that E. took J. to husband, and levied a fine. J. demised to L. who demised to plaintiff; replication, that fine was levied to the use of E. and

- and his heirs; and traverses that it was levied to the uses alledged, *Co. Ent.* 604.
- Avowry**, damage feasant in freehold; plea, that J. seised, devised lands to wife for life, remainder to E. in tail, and if she should die without issue, then lands to be sold by executors; wife died, executors sold to plaintiff, and traverses freehold; demurrer, *Co. Ent.* 602.
- That E. seised of ten acres, devised to H. in fee, and C. being seised, enfeoffed E. of twelve acres. H. died in life of E. who afterwards *declared* that S. son of H. would be heir of E. and would have lands devised to his father, and died, S. entered as heir; demurrer, *Ra. Ent.* 562. *Plb.* 340.
- That M. being seised, devised to defendant in tail; plea, that the said M. died seised, and lands descended to A. who enfeoffed R. who gave licence to plaintiff to put in his cattle; and traverses devise to defendant, 3. *Br.* 379.
- Avowry**, damage feasant in freehold; plea in bar, that W. being seised of lands that descended to S. who demised to plaintiff for life. Defendant entered by disseisin, and plaintiff re-entered. Replication, maintains freehold; and traverse disseisin, *Br.* 201. Similar avowry, plea, that W. seised, demised to plaintiff at will, defendant disseised W. and expelled plaintiff, who, under pretence of demise, put in his cattle. Replication, maintains freehold, and traverse disseisin, *Ra. Ent.* 568. *Reg.* 99.
- Avowry**, freehold; plea, that J. and wife seised, demised by indenture to M. and S. for lives. M. died, S. demised his moiety to plaintiff for years, if they should so long live. Replication, that demise was made with a defeasance, to be void on payment of eleven pounds, which were tendered at the day, and no person ready to receive, and so void; rejoinder, that S. did not seal and deliver defeasance; and issue, 3. *Br.* 345.
- Avowry**, freehold; plea, that H. seised, demised to plaintiff in reversion after the death of A. and B. tenants for lives, who died; replication, maintains avowry; and traverse demise, *A/b.* 391.
- Avowry** by J. and B. his *wife* in freehold of *wife*; plea in bar, that S. being seised of lands that descended to H. who demised to plaintiff at will. R. disseised H. and expelled plaintiff, to which disseisin J. consented; replication, that M. seised, demised to R. for life; rejoinder, mentioning the bar, and traversing the demise to K. *Ra. Ent.* 568.
- Avowry**, damage feasant in freehold; plea, that W. being seised, demised to J. for life, and afterwards agreed to convey lands to his own use for life, with power of leasing for three lives or twenty-one years, and afterwards to the use of defendant in tail. W. levied a fine to the use in the indenture, and demised to plaintiff for years, if two should so long live, J. died, and plaintiff entered; replication, confesses demise to J. and covenant by indenture; the fine levied to such uses, and demise to plaintiff; and says, that J. and W. died, and defendant entered, as of his remainder, demurrer, *Co. Ent.* 600.
- That W. seised, agreed to assure lands to uses, and levied a fine to the uses in the indenture, viz. to his own use for life, remainder to H.; remainder descends to L. who, after the death of W. entered, and levied a fine to defendant; plea, that in the indenture it was provided to make it void, on tender of a gold ring, and that W. was attainted by act of parliament, and ring offered on the part of the king to make void the indenture. King granted to plaintiff for life; replication, that there was a *saving* in the act, and that L. after the death of M. by petition of right, had livery of the lands by the king, and levied a fine to defendant; demurrer, *Her.* 607.
- Avowry** to part of cattle, that J. being seised, made a feoffment to uses before the statute, and use descended to defendant, who, by *consent* of feoffers, took the profits, and took the cattle, damage feasant; demurrer and judgment for plaintiff, *Ra. Ent.* 554.

Cognizance as bailiff of E. damage feasant in the freehold; bar, that lands held in socage descended to B. within age, and plaintiff entered as guardian in socage; replication, maintaining cognizance, and traverses tenure in socage, 1. Br. 22.

Avowry, that queen Elizabeth seised of the manor whereof, &c. granted copyhold lands to R. and M. his wife, and the heirs of his wife, who surrendered to defendant's use; plea, that W. first seised of the manor, granted lands to J. from whom they descended to P. who surrendered to A. who surrendered to M. for life, who demised to plaintiff; replication, that M. before the grant to J. granted lands to B. from whom they descended to M. who surrendered to defendant; traverses the grant to J.; and issue, Co. Ent. 575.

That the king being seised of manor, granted *copyhold* lands to J. wife of H. in fee, from whom (the wife) they descended to defendant; plea, that H. and J. at a certain court (she being examined alone by the steward) surrendered to use of plaintiff, who was admitted; replication, that H. surrendered, and J. afterwards died, and lands descended to defendant; and traverse that J. was apart examined by steward, 3. Br. 370.

That D. seised of the manor, granted copyhold lands to defendant for life; plea, that S. being before seised of the manor, granted lands to J. now deceased, and plaintiff, for their lives; replication, co-assignees grant by S. &c. but pleads, that S. demised the manor for years to M. and reversion to D. and that plaintiff and J. surrendered to use of J. and his wife, were admitted and died, and D. after the term ended, granted lands to defendant for life; rejoinder, maintaining avowry, and traverses surrender, Her. 653.

That J. seised of the manor whereof customary copyhold lands descended to youngest son by custom, granted lands to husband and wife, and heirs of the husband, wife survived, and reversion descended to the brother, and from him to the youngest son, &c. Her. 679.

That T. seised in fee, took defendant to husband, who is *tenant by the curtesy*; plea, that F. was not seised of such an estate, that defendant could be tenant by the curtesy; replender awarded, and plaintiff pleads that the lands are *copyhold*, and were demised first to F. from whom they descended to F. and K. daughters. R. took to husband plaintiff, and survived F. who died without issue, and his moiety descended to K. and traverse that J. was seised in fee, Her. 681.

II. Avowries and Cognizances, UNDER DEMISES, Damage Feasant, and Pleas in Bar, &c. to.

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21. AVOWRY, that *locus in quo* is parcel of the manor of L. and that defendant is *tenant for years*, and took the
22. mare as a distress, damage feasant therein; replication, *de injuria*, &c. traversing *locus in quo* to be parcel, &c.
22. AVOWRY and cognizance by *two* persons, one in his own right, and the other as his bailiff, and bailiff to a third person, who, together with the former, were *tenants from year to year at will* of both parties to a *tenant for life*, and that they took, &c. damage feasant;
23. 2d, that A. B. seised in fee of a messuage and lands, and entitled to a very *particular right of common* for *particular* cattle, from a certain time to such a time in

a year,

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- a year, and *demised* same to avowant and his co tenant; and because the cattle were trespassing at the said time when, &c. being a time within. &c. they justify taking them, damage feasant; 3d, prescribes in respect of a *messuage*, instead of messuage and lands.
24. **DECLARATION** for taking a gelding and a mare in B. R. **AVOWRY**, damage feasant, stating defendant to be *possessed* generally, without stating a title.
25. **AVOWRY**, that lord T. seised of *locus*, and *demised* same to R. P. as *tenant from year to year*, that R. P. demised to defendant for one year, and because the mare was damage feasant, &c.; **PLEA** in bar, admits lord T.'s seisin, and the demise to R. P. and the demise to defendant; but protesting that defendant, at the time when, &c. was not possessed, but says, that defendant demised to plaintiff to hold, &c. who entered, and at the time when, &c. was possessed thereof, and put in his cattle, until defendant, *de injuria*, &c.; **REPLICATION**, admits the demise to defendant, but says, it was made in consideration of a sum of money paid by plaintiff to defendant, and under a proviso, that if the cattle of one A. B. were turned into *locus*, &c. the demise should be void, and upon defendant repairing, on consideration he might enter, the cattle of A. B. were turned into *locus*, and defendant tendered the consideration money, and re-entered, and because cattle were damage feasant, &c.
27. **PLEA** in bar to avowry, that *locus* adjoins a close, and is divided therefrom by a hedge or fence, in which there is a fence and gateway leading from *locus* into the said close; that tenants ought to repair the said gate and gateway, and keep the gate shut; that plaintiff being possessed of the said close, put his cattle therein, and because the gate was open, the cattle escaped; 2d, because defendant wrongfully set open his gate; **REPLICATION**, admits the situation of *locus*, and says, the cattle were wrongfully there; traverses that tenants are bound to repair; to 2d, the like traversing; opening the gate.
29. **AVOWRY** and cognizance (for taking sheep in a place called A. B.) that the *locus* is pasture, and known by the name of A. B. and is divided into a number of cattle-gates, which are *demiseable* by the lord of the manor; that the lord demised five of the gates to one of the defendants, and because, &c.; **PLEA** in bar, admits that *locus* is parcel of the manor, but says, that one C. D. was possessed of the manor of H. and also of a house and premises contiguous to a common belonging to the manor of H. only separated therefrom by a small rivulet, which is not sufficient to prevent cattle from escaping from the common into *locus*;
31. **AVOWRY** and cognizance (for taking sheep in a place called A. B.) that the *locus* is pasture, and known by the name of A. B. and is divided into a number of cattle-gates, which are *demiseable* by the lord of the manor; that the lord demised five of the gates to one of the defendants, and because, &c.; **PLEA** in bar, admits that *locus* is parcel of the manor, but says, that one C. D. was possessed of the manor of H. and also of a house and premises contiguous to a common belonging to the manor of H. only separated therefrom by a small rivulet, which is not sufficient to prevent cattle from escaping from the common into *locus*;
32. **AVOWRY** and cognizance (for taking sheep in a place called A. B.) that the *locus* is pasture, and known by the name of A. B. and is divided into a number of cattle-gates, which are *demiseable* by the lord of the manor; that the lord demised five of the gates to one of the defendants, and because, &c.; **PLEA** in bar, admits that *locus* is parcel of the manor, but says, that one C. D. was possessed of the manor of H. and also of a house and premises contiguous to a common belonging to the manor of H. only separated therefrom by a small rivulet, which is not sufficient to prevent cattle from escaping from the common into *locus*;
33. **AVOWRY** and cognizance (for taking sheep in a place called A. B.) that the *locus* is pasture, and known by the name of A. B. and is divided into a number of cattle-gates, which are *demiseable* by the lord of the manor; that the lord demised five of the gates to one of the defendants, and because, &c.; **PLEA** in bar, admits that *locus* is parcel of the manor, but says, that one C. D. was possessed of the manor of H. and also of a house and premises contiguous to a common belonging to the manor of H. only separated therefrom by a small rivulet, which is not sufficient to prevent cattle from escaping from the common into *locus*;

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- that C. D. demised the same to plaintiff, whereby he became entitled to common of pasture, and that plaintiff and his father put their sheep therein; and because *locus* was not separated by a proper hedge from the close, the cattle escaped and strayed; REPLICATION, that the sheep were in *loco of plaintiff's own wrong*, and traverses plaintiff's right of common.
35. Avowry, for taking cattle; 1st, *non cepit*; 2d, that *locus*, &c. was the property of one A. B. for a long term of years, and that he demised the same to defendant; and because the cattle were doing damage there, he seized them; plea in bar, allotment under an inclosing act, of a close contiguous to plaintiff's close allotted under the same act, and *through defect of defendant's fences*, cattle escaped into close of defendant, who was *awarded* under the act to make same, and keep them in repair.

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3. Cognizance as bailiff, distraining for rent under a demise.
15. Avowry, for rent arrear under a demise, part for three
16. quarter's rent, payable quarterly; 2d, half a year's rent payable half-yearly. Plea in bar, 1st, *de injuria*, &c. traversing demise. 2d plea in bar to first avowry, nothing in arrear, and conclusion to the country. 3d plea to 2d avowry, *de injuria*, &c. traverses demise. 4th plea in bar to last avowry, no rent in arrear. and conclusion to the country. Replication to 1st plea, to 1st avowry, issue on the traverse. 2d replication to 1st plea to 2d avowry similar; demurrer to 1st replication, with causes, not taking issue on the words of the traverse, insufficient in other respects; demurrer to 2d replication, that it concludes to the country, whereas it should have concluded with a verification; joinder to 1st demurrer; 2d joinder in demurrer to 2d demurrer (all proceedings in replevin set out from the plaint to final judgment.)
18. 25. Avowry, for rent under demise (proceedings set out.)
- Avowry, as lessee for years, for damage feasant; plea in bar, right of common in *locus in quo*; replication, *de injuria*, traversing plaintiff's right of common; rejoinder, taking issue on the traverse, - - -
- Avowry, by the lessee of the tenant for years to tenant by *elegit*, for damage feasant, - - -
- Plea in abatement to the declaration in replevin, that the defendants took the cattle in another place than mentioned in the declaration, and for a return cognizance as bailiffs to J. H. the lessee from year to year of C. C. the tenant in fee of the *locus in quo* for damage feasant; plea in bar, taking issue on the traverse of the place, - - -

2. R. Pr. C. P. 339

Ibid. 374

Ibid. 376
Avowry,

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Avowry, that G. had herbage and pasture in *locus in quo*, &c. every year when sown with grain, immediately after grain was carried off until it was resown, and every year when it lay fallow for the whole year, and *demised* to defendant for ninety years, if he should so long live; demurrer, *Wi. Ent.* 888.

That F. being seised, made a feoffment to uses, and J. tenant for life, demised lands to defendant, who being possessed of cattle, put them into lands to depasture; and traverses that cattle were plaintiff's cattle, and issue. *Her.* 629.

Avowry, that E. being seised of *locus in quo*, &c. *demised* to defendant for a year, and so from year to year, and avows damage feasant; plea in bar, prior demise made to plaintiff, and traverses demise made to defendant; demurrer, 2. *Vent.* 211.

Avowry, by lessee of bishop for damage feasant, and averment that bishop is alive; plea in bar, that *locus* is parcel of a manor, and demiseable by copy, and entitles himself by copy granted by the predecessor of the bishop; defendant maintains avowry, and traverses the prescription, *Pl. Gen.* 575.

Avowry, that R. being seised of messuages and lands, whereof, &c. *demised* to defendant for years, who avows damage feasant; plea, being seised of the manor whereof houses and lands were held and demiseable by copy granted to B. in fee, who gave plaintiff licence to put in his cattle; demurrer, *Wi. Ent.* 866.

Avowry, A. seised of several parcels of lands, *demised* to W. for one hundred and sixty years, that by several assignments came to R. who demised to defendant for twenty-one years, who took cattle damage feasant in M. and traverse that he took *in loco* in the Count; bar, common of pasture in M. *Ro. Ent.* 405.

Avowry by assignee of executrix of lessee for years, damage feasant; plea, that lessee died intestate, and derives title from administrator; *absque hoc*, that he was made executrix, and issue, *Pl. Gen.* 584.

Avowry, by assignee of a term for cattle, damage feasant; plea, prior assignment made to plaintiff; replication, maintaining the avowry, and traverse assignment to plaintiff, 1. *Bro.* 310. *Wi. Ent.* 922.

Plea in bar, that W. being seised, enfeoffed R. who demised, and traverse that W. died seised, *Tbo.* 270.

Plea in bar to avowry by lease, on condition that lessee shall not assign, and lessee breaks the condition, &c. *Pl. Gen.* 533. &c. To avowry, by lease made by a chapter taken before the statute 1. E. 6. *Pl. Gen.* 551.

That bishop, being seised of the manor, *demised* to defendant for years, *Ra. Ent.* 559. *Vit. Int.* 55.

That T. being seised, demised from year to year at will, and defendant at will sowed the lands in which he took cattle, damage feasant, *Ra. Ent.* 561. *Up.* 111.

That T. being seised, demised to R. and J. for lives, remainder in tail descended to two women coheiresses, who make *partition* thereof, and of other lands husband and wife demised to defendant for years, *Ra. Ent.* 563. *Plo.* 426.

That M. seised of messuages and lands, whereof, &c. demised to defendant for years, *Ra. Ent.* 566. That R. being seised, demised to defendant for a year, and so from year to year, 3. *Br.* 321.

That plaintiff, seised of lands, demised to defendant for years, if three should so long live; plea in bar, that *demise* was made by indenture, on condition of re-entering for rent unpaid, without distress found, and re-entered for rent in default of distress; replication, there was sufficient distress, viz. certain goods; rejoinder, protesting that such goods were not upon premises; for plea, that lands were not *open (aperte)* to distrain, 3. *Br.* 341.

That E. being seised, demised to defendant for years, so long as three should live, 3. *Br.* 352.

Plea, *property* in part, and to residue, avowry damage feasant in lands demised for years, if he and two others should so long live, *Her.* 4.

That

That A. seised, demised for years; plea, that A. demised to plaintiff's wife for life, and traverses demise to defendant, *Ass. 394.*

Avowry, damage feasant; plea, that W. seised, demised by indenture to J. for ten years, rendering ten pounds, and at the end of the term a quantity of tiles or bricks as a fine on a fresh demise by others for ten years, and so for ever from ten years to ten years for a similar fine, and several terms of ten years expired. and I. paid the tiles, &c. W. devised lands to F. in fee, and J. devised the term to R. who assigned to plaintiff, *Ra. Ent. 562. Plo. 268.* Similar avowry, plea, that N. seised in tail, levied a fine with tender to S. for years. S. made J. executor, who made B. executor, who demised to plaintiff for years; demurrer, *Ra. Ent. 564. Plo. 428.* Similar avowry; plea, that abbot seised, demised to three for their lives, and afterwards demised for years in reversion to J. H. 8. seized by statute dissolutions granted lands to L. and J. assigned the term to plaintiff; demurrer, *Ra. Ent. 572. Plo. 146. Ass. 403.*

Avowry, by assignee of a term, for a piece of cloth, damage feasant, *Vet. Int. 241.*

That king seised of a park, granted the keeping and herbage thereof to J. and E. for lives, and afterwards granted the reversion to H. and M. his wife in tail that descended to defendant; plea, confesses the several grants, and pleads surrender of the office to H. and N. who demised to T. for years for a fine, and king granted to him the reversion in fee. H. and N. died, estate tail descends to E. who levies a fine to W. and others in fee, who with T. demised to plaintiff for years; demurrer, *Co. Ent. 577.*

Avowry, that J. seised, demised to F. for years, who devised to E. his wife for life, remainder to M. his daughter in tail. M. took D. to husband, who granted to plaintiff, who acknowledged statute staple to defendant, whereof there was an extent and liberate; plea, usurious contract between plaintiff and D.; *nil dicit* thereto, *Her. 621.*

Cognizance as bailiff of lessee for years of a moiety, and of one seised in fee of the other moiety, *Her. 641.*

For Avowry under Demises (*See Rent on Demises, post. exciv. ccv.*)

III. Avowries and Cognizances (and Pleas in Bar, &c. to). By COMMONERS.

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44. Declaration in replevin for taking a mare; avowry and cognizance taking cattle, damage feasant in *loco*, &c. parcel of a common in the manor of A. over which avowant claims a *common of pasture* in right of a copyhold messuage and land granted by the lord to the avowant, and two others, for their lives, and the life of the survivor, for all commonable cattle levant and couchant on said messuage and land; plea in bar, *de injuria*, &c. and traverse of common of pasture; 2d, leave and licence from the bailiff; 3d, *de injuria*, and traverses the grant from the lord; 4th, leave and licence of one W. A. who claims an unlimited common of pasture in *loco*, in right of a copyhold tenement demised to him by the lord.

48. Declaration in replevin for taking sheep; avowry and cognizance *locus a waste* within the manor of H. a

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- messuage and land, part of the manor demiseable, a grant of the messuage and land from the lord of the manor to E. B. who entered, and is seised. E. B. demised by indenture, and with the consent of the lord, to one of the defendants for twenty-one years, a custom for every tenant of the said messuage and land upon paying a heath rent of sixpence, to have *common of pasture over locus* for twenty sheep or two horses, or two cows, and paying heath-rent of threepence for ten sheep, one horse, or one cow; that defendant paid a rent of sixpence, and because plaintiff's sheep were damage feasant there, *per quod*, he could not enjoy, &c.; 2d avowry, a custom within the manor for the homage of the court baron to make bye laws for regulating the common, as stated in first avowry, and because, &c.; plea in bar, admit *locus*, &c. but says, that one W. R. seised of forty-six acres of land in the same parish near to *locus*, &c. prescription for common of pasture over *locus* for sheep, a demise from W. R. to plaintiff, by which plaintiff put in his sheep until defendant *de injuria sua*, &c.; replication, supporting avowry, and traverse of plaintiff's right of common.
50. Plea in bar to avowry; damage feasant, that *locus* lies contiguous to a common; that tenants of the *locus* ought to repair the fence between the *locus* and common; that lord D. was seised of a messuage; prescription for common of pasture over *locus*, for all cattle at all times of the year; demise of the messuage, &c. to plaintiff; that plaintiff put his cattle on the common, and because the fence was out of repair, cattle escaped, &c.; 2d, that *locus* adjoins a close called G. M.; that tenants of *locus* ought to repair, &c.; lord D. seised of the close, gave *leave* to plaintiff to put in his cattle, and because, &c.; replication, that the fence, before the time when, &c. was in good repair, and that plaintiff, a little before the said time when, &c. pulled it down.
54. Plea in bar, that *locus* was contiguous to a common, and which was separated from the common by a fence and a ditch; that tenants of the *locus* have been used immemorially to keep up a fence of a proper height, and to scour the ditch; that plaintiff was seised of a messuage and land, in right whereof he prescribes for *common of pasture* on the common for all commonable cattle levant and couchant, and being so seised, plaintiff put the mare and gelding on the common to depasture, and because the fence was not of a proper height, and also because the ditch was filled up, the cattle strayed out of the common into the *locus*;
55. replication, protesting that plaintiff is not seised of the said messuage and land, for replication that the cattle

were

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- were wrongfully in the *locus*; traversing right of common; rejoinder, issue on the traverse.
59. Declaration for taking sheep, &c.; avowry by the master, fellows, and scholars of Trinity College, seised of different manors and a court-leet; sets out a very particular custom of *common of pasture*, according to the course of tillage, and custom for the jury to appoint field reeves, and to make bye laws respecting such common imposing penalties on the breach; pleas in bar.
62. Avowry and cognizance (for taking cattle) that a certain messuage is parcel of a manor demiseable by the lord, and that the *locus* is parcel of the manor wherein there is a custom, that every tenant of a customary tenement shall have *common of pasture* when the *locus* shall have been sown with corn, until it shall have been resown, and also a custom within the manor, that the husband of every wife being a tenant, should be possessed of the tenement after her death for the term of his natural life; that the steward of the manor granted the house to the wife, and that she died; whereupon one of the defendants became seised thereof as her husband, and by virtue thereof was entitled to common of pasture, while *locus* was not resown with corn, and because the cattle were there eating the grass, he well avows, &c. damage feasant.
64. Avowry, tenants of the manor have *common* in *locus*, and particular custom as to the usage of it, and distress for breach of the custom; plea, protesting that there is no such custom, that the close is within his own manor.
65. traverses the custom, and plaintiff takes issue on the traverse.
- 66, 67. Avowry, for taking a gelding, damage feasant; plea in bar, prescribes for common of pasture, defendant traverses the custom, and plaintiff takes issue on the traverse.
68. traverses the custom, and plaintiff takes issue on the traverse.
- 68, 69. Avowry, by a copyhold and customary tenement; plea, that plaintiff was customary tenant of the said manor when defendant, *de injuria*, &c.; 2d plea, a right of way in respect of a customary tenement; replication to the first plea, traverses plaintiff's right in respect of his customary tenement; to 2d, that cattle were out of the way.
71. Cognizance, damage feasant upon the will of M. A.; plea, a *right of common* in respect of the freehold;
72. 2d, a right of common *pur cause de vicinage*; replication, maintaining cognizance, traversing the right; demurrer thereto.
73. Avowry, by a customary tenant, damage feasant on the common; plea, that the preceding lord had enfeoffed A. S. of a piece of ground, and granted him common of pasture, with an averment of sufficiency of common;
- 74, 75. replication, traverses sufficiency of common.

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82. Cognizance, for taking a mare, damage feasant ; plea in bar, common of pasture belonging to a customary tenement which was demised to plaintiff by J. S. ; replication, traversing the custom.

84. Avowry, and cognizance for damage feasant in plaintiff's freehold, to declaration for seizing plaintiff's cattle ; plea in bar, acknowledging the freehold to be in defendant, as alleged in the avowry, but shews a seisin in fee in R. W. in two acres of arable land in the field which, &c. with a right of common of pasture in all said field, except two acres, when said field laid fallow for the whole year till resown with corn, and in every year when so sown from time of reaping till resown for a certain number of cattle, and that R. W. demised same to plaintiff for one hundred years, by virtue whereof he entered, and that at said time when, &c. said field was fallow, whereupon he put seven ewes and seven lambs into said two acres, till defendant took them ; replication, confesses seisin and right of common, and demise by R. W. to plaintiff, but says, that plaintiff put seventeen ewes and seventeen lambs, and traverses his only putting in seven ; rejoinder, says as before, that he only put in seven, and issue,

Replevin, for taking cattle, defendants make cognizance as bailiffs of lord D. and justify taking damage feasant ; plea in bar, that A. C. and all those whose estate he had, ought of right for tenants and occupiers of premises, to have common of pasture for commonable cattle, -

Lill. Ent. 359

Replevin, avowry that J. B. was seised in fee, and devised to wife for life, remainder to son J. B. charging them with an annuity to J. B. with power of distress, -

3. T. R. 147

Replevin, for taking gelding ; acknowledges the taking damage feasant in *locus in quo* in common ; plea in bar, prescribing in a *que* estate for all commonable cattle levant and couchant, except when the *locus in quo* was sown with corn ; 2d and 3d plea, prescribing like the first ; 4th plea, that the *locus in quo* were fields dispersed and adjoining, and that the cattle intercommoned, unless at certain times of the year before the corn was carried off, and that cattle had been accustomed to stray after that time, which was called shack ; replication to all the pleas, an agreement entered into by the respective tenants, who all had right of common, not to exercise their right of common for their mutual convenience, and entered into covenants for that purpose ; setting forth, that from the time of carrying off the corn, &c. it had been a practice by general consent to sow with turnips, and to inclose, setting forth other special circumstances, and that the cattle of plaintiff were turned loose, and going at large on defendant's field, contrary to such agreement, -

Plea in bar to cognizance as bailiffs to the king in replevin, for seizing plaintiff's hogs in the New Forest, Hants ; that the king granted to the earl of S. a right of common and

2. H. Bl. Rep. 4 to 9

pannage

pannage for hogs at all times of the year, and a title at the time of passing an act for inclosing two thousand acres, one thousand at the time of passing the act, and one thousand at another time; sets forth, that inclosures were made of one thousand acres only, and sets out a demise from D. of M. of part not inclosed; replication, a clause in the act, that commoners should enjoy common for hogs only between the fourteenth of September and the eleventh of November, on forfeiture of any hog, and right of common is continued, except within time of winter hedging; rejoinder, setting out the day, and that at the end of the first session of parliament held remaining, one thousand were not nor are yet admeasured; demurrer, - -

2. Burr. 1117

Cognizance, as bailiff, damage feasant; plea in bar, that plaintiff, seised of houses, had *common* for all milch cows throughout the year; replication, mentioning cognizance, and traverses prescription, *Ash. 389.*

Plea in bar (to similar cognizance) that plaintiff, seised, &c. had *common* of acorns for all pigs rung in acorn time; replication, similar, *Her. 642.*

Cognizance, for cattle taken, damage feasant for depasturing the grass, and masting the trees; plea, &c. prescribes for *common* of pasture, *Her. 641.*

That R. seised of the manor inclosed, and approved parcel of the land waste thereof, and left sufficient *common* and way for tenants of the manor in the residue; plea, &c. that plaintiff had common of pasture, and traverses that R. left sufficient *common* and way in the residue, *Her. 645.*

Avowry, by lessee of a manor; plea, &c. that the inhabitants of the vill had common in two hundred acres of pasture, whereof, &c. for all cattle levant, &c. from festival to festival; replication, maintaining the avowry, and traverses the custom of the common, *Ra. Ent. 559. Vet. Int. 45. 55.*

Plea in bar, that plaintiff hath common in a field called M. adjoining said two acres for all beasts, and that defendant and all the copyholders were used to inclose said two acres from the field, in defect whereof plaintiff's beasts entered into the said two acres out of the field, 1. *Bro. 309.*

Avowry, damage feasant in the freehold; plea in bar, that W. seised of three acres of land called, &c. demised to plaintiff at will, and defendant, and all those whose estate, &c. were accustomed to inclose one acre of meadow adjoining, &c. with hedges, &c. and for defect of the inclosure the beasts entered; replication, that a brook forms a fence between plaintiff's and defendant's lands, and traverse the custom, 1. *Bro. 309.*

Similar plea for part of the fences at the east end of the close, through defect of fences to inclose, the cattle entered; replication, confesses the custom, but that hedges were in sufficient repair, but that the cattle were untractable, and broke the hedges, and traverses the entry through defect of fences, 1. *Bro. 310.* Similar replication, traversing that the hedges were broken, *Ibid.*

Similar replication, that among plaintiff's cattle there was an untractable cow, which he tied with a rope to prevent her breaking down the hedges which defendant, together with J. untied, and that the hedges being out of repair, the cow entered with the other cattle, *Ibid.*

Cognizance, damage feasant in the freehold; plea in bar, that the dean and chapter, seised of the manor whereof, &c. granted plaintiff customary tenements, according to the custom of the manor, and that within the manor there is a custom, that every customary tenant hath common in *locus*, &c. for nine beasts,

on the tenements levant throughout the year; replication, confesses part of the plea in bar, but that one N. being a customary tenant of the manor, cut an ash-tree growing on the customary close, contrary to the custom, and without the licence of the lord, and plaintiff, with others, being then sworn of the homage to make inquisition, and to return a verdict, contemptuously refused, by which plaintiff *forfeited* his estate; rejoinder, protesting, &c. for plea, that within the manor there was a custom for every customary tenant to cut trees for fuel and fences, and traverse that N. cut an ash contrary to the custom; demurrer, *Wi. Ent.* 818. *Wi. Rep.* 62.; judgment for plaintiff on defects appearing in the plea, &c.

Avowry, damage feasant in defendant's *common*, being a copyholder; plea in bar, protesting, &c. for plea, that R. seised of the manor whereof messuages and lands, called P. were parcel and customary, held by his customary tenants of P. common of pasture in *locus*, &c. for all sheep and lambs on those tenements levant throughout the year, that tenements were granted, and he put in his sheep; replication, protesting no such prescription, for plea, *de injuria*, &c. put in the cattle, and traverses that the beasts, at the time of the taking, were levant on the tenements called P.; demurrer, *Wi. Ent.* 857. Judgment for defendant; traverse held good.

Cognizance as bailiff, damage feasant in the freehold; plea in bar, plaintiff confesses *locus*, &c. to be defendant's freehold, but pleads that R. seised of houses and lands, had common for himself and his tenants in the field whereof *locus* was parcel for twenty sheep, when corn shall have been carried off, until the festival, who demised to plaintiff; replication, that *locus* was not parcel, &c.; issue, *Tbo.* 266.

Cognizance, similar; plea in bar, that M. seised of the manor, granted messuage and land to defendant and four others for their lives, and within the manor there was a custom that every customary tenant have *common* of pasture in the said one thousand acres, for all cattle levant on the tenements for the whole of the year, and plaintiff put in his cattle; Replication, maintains freehold, and *de injuria*, &c. and traverses that the cattle were levant on the tenements, and issue, *Wi. Ent.* 955. Special verdict.

Avowry, damage feasant in the freehold; plea in bar, that plaintiff seised of messuages and lands, had common of pasture in *locus* for all his sheep on the tenements levant for the whole year; replication, protesting that he was not seised, &c. for plea, that it was agreed between defendant, and plaintiff, and others, that plaintiff and others, freeholders in S. should have *common* in H. and L. without interruption of defendant, and plaintiff in consideration thereof *demised* to defendant common of pasture which they had in *locus*, &c.; demurrer, *Wi. Ent.* 920.

Avowry similar; plea in bar, that plaintiff, seised of messuages and lands, had common of pasture in *locus*, &c. for one hundred sheep on tenements levant for the whole year; replication, maintaining avowry, and traverses prescription, and issue, *Br. R.* 429. Similar, for all cattle, *Tbo.* 271.

Plea in bar by freehold, and right of common traversed, and issue, *Clif.* 636.

Cognizance, damage feasant; plea in bar, special prescription for common in an arable field for a certain time; replication, that the *locus*, &c. is his freehold, traverses prescription, and issue on that, *venire facias* awarded, returnable on the octave of the Purification, at which day plaintiff pleads *release of one of the defendants since the last continuance*; demurrer as to a plea pleaded at the assizes; and joinder, 2. *Lut.* 1141.

Avowry, that A. B. seised in fee of one of the messuages, &c. had common by prescription in *locus*, &c. and demises the messuages, &c. to defendant, &c. and for that he avows damage feasant; plea in bar, that his lessor had also common by prescription for a certain time of the year; replication, that plaintiff surcharged the common, and issue, 2. *Lut.* 1238.

Avowry

Avowry and cognizance, damage feasant; plea in bar, by several *common appurtenances* for a certain number by prescription, and traverse, maintains, &c. *Pl. Gen.* 519. 526.

Cognizance, taking the cattle as bailiff, damage feasant, in freehold of J.; plea in bar, that the queen, seised of the manor, had common of pasture in *locus*, &c. for himself and customary tenants, for all commonable cattle throughout the year, that plaintiff was customary tenant, who put in the cattle; replication, maintaining the freehold, and traverse prescription, *Ro. Ent.* 141.

Avowry, taking cattle damage feasant in M. demised, and traverses place in the Count; plea in bar, that plaintiff, seised of lands, had common of pasture in *locus* called M. for all beasts, every year, from a certain day to the feast of, &c. and defendant, to disturb plaintiff in the use of the common, sowed it with barley; replication, maintaining avowry, and traverses the prescription, *Ro. Ent.* 400.

Avowry, similar, without a traverse; plea in bar, that H. and E. seised of houses and five yard lands, had common in *locus*, &c. for all cattle called rother beasts levant, &c. every year from day to day; H. and E. levy a fine of the tenements (*inter alia*) with certain descriptions, &c. (and no mention of the common) to the use of plaintiff and wife for their lives, who put in the beasts; demurrer, *Wi. Ent.* 862.

That defendant, seised of messuages, &c. had common in *locus*, &c. and took the said beasts damage feasant; plea in bar, that H. seised of the messuages and lands, had *common* of pasture by himself and tenants in the said *locus*, &c. for all commonable cattle levant, &c. throughout the year, and demised to plaintiff, who put in his cattle; replication, protesting that H. had no common, for plea that H. demised to plaintiff, and traverses that H. demised to plaintiff, *Wi. Ent.* 938. *Hob.* 72.

Avowry, damage feasant in freehold; plea in bar, that R. seised of the manor of D. by himself and his farmers of the said manor, or of any part thereof, had common in *locus*, &c. for all commonable cattle levant, &c. when the fields called E. and M. should lay fallow for a whole year, and after the grain sown from and after the feast of Pentecost, were used to fasten the horses to posts on the *locus*, &c. until the grain was carried off, and afterwards by all commonable cattle, until the same was resown, and R. demised to plaintiff the messuages and lands, parcel of the manor, who used the common; replication, maintains the avowry, and traverses the prescription; issue and special verdict, *Wi. Ent.* 950. Verdict for plaintiff on the issue, *Hob.* 64.

Avowry, similar; plea in bar, that plaintiff's father, seised of messuages and lands in four *vills*, had common of pasture in *locus*, &c. for all cattle called rother beasts and horses levant on the tenements from feast to feast, and demised to M. for life, who demised parcel of the lands to plaintiff for the life of M. who put in his cattle; replication, maintaining freehold, traverses prescription; issue and special verdict, *Wi. Ent.* 957. *Hob.* 209.

Cognizance, similar; Plea, plaintiff seised of a freehold of the manor of M. by rent and services, and divers other freeholds, and divers other customary tenements, parcel of the said manor, and that several tenants of freeholds had, together with the customary tenants, sole and several, pasture in *locus*, &c. for all beasts, except, &c. upon their respective freeholds levant for the whole year, and in the same manor there was a custom that the several copyholders as well as freeholders had sole and several pasture; demurrer, 1. *San.* 348. 340.

That defendant, seised of houses and lands, had common of pasture in *locus*, &c. for all cattle levant, &c. for two years and half of a year in every three years and every third year in *locus*, from the feast of the Annunciation till Michaelmas, was used to lay for pasture, &c.; special demurrer, for that the defendant had not entitled himself to common in his recovery, *Br. R.* 431.

Avowry

Avowry by one who had right of common, for that he could not enjoy his common in so ample manner, &c.; traverse of the right, *Clif.* 634.

Count on taking six steers in a place called M.; avowry and cognizance, as to four steers, that defendant R. was seised in fee of thirty-four cattle gates in *locus*, &c. and that plaintiff's beasts were damage feasant, for which, &c.; another plea for the other two steers, for that one of other of the defendants had eight cattle gates there; special demurrer to the first avowry, and as to the two steers pleads that *locus*, &c. is parcel of the manor of M. and which he was seised in fee, and there was sufficient *pasture* as well for the beasts of defendants as of all others, having right, &c.; joinder in demurrer by defendants, as to avowry for the four steers, and to the bar to the avowry for the two steers; replication, maintains avowry, and besides says, that none except those who have cattle gates, &c. have any right to put in, &c. any cattle in *locus*, &c. and that defendant H. and divers others were seised or possessed of the two hundred and seventeen cattle gates, whereof, &c. and that it belonged to them to have the sole and several pasture, &c. and that the plaintiff was not seised or possessed of any cattle gates, by which, &c. and traverses the sufficiency of common; demurrer, for that it is a *departure* from the avowry, &c.; judgment, that the avowries were bad, because no title to the cattle gates shewn, 2. *Lut.* 1157.

Avowry, on a custom, that if any tenant puts in a common his cattle before a certain day the lord may distrain and justify damage feasant; bar, protesting that there is no such custom, for plea, that the *locus*, &c. is within his freehold, and traverses that it is within the lordship; issue and verdict for avowant, *Thef. Br.* 56. 57.

Replevin by three, one avows damage feasant in his freehold; bar, and each justify severally by right of common by prescription, *Pl. Gen.* 496.

Similar avowry and bar, defendant maintains his freehold and traverses prescription alledged by plaintiffs separately, and plaintiffs maintain several pleas in bar, by usage of common by prescription, and issue, *Pl. Gen.* 519.

Cognizance as bailiff, damage feasant in his freehold; plea in bar, that plaintiff, seised of houses and lands, had common in *locus*, &c. for all *sheep* every year when the field should be sown after corn carried off until resown, and throughout the year when *locus*, or any part, lie fallow, in whole or in part if it lies fallow; replication, maintains cognizance, and traverses the prescription; rejoinder and issue, 1. *Bro.* 304.

Avowry, that he had common for four cattle every year from the middle watch of the festival of P. and J. until the first morning, and from thence every day and night until the feast of St. John the Baptist, *Bro. R.* 427.; and avows for damage feasant, *Clif.* 634.

That the bishop of N. seised of the manor, had common of pasture in *locus*, &c. for his customary tenants of houses and thirty acres of land, for all his commonable cattle on the tenements levant, throughout the year, which tenements were granted to defendant, who avows damage feasant, *Wi. Ent.* 857.

That defendant is a customary tenant within the manor of B. and that within the manor there is a custom that every customary tenant hath common in *locus*, &c. for all commonable cattle levant on the tenements throughout the year, and took the cattle damage feasant; bar, confesses the avowry, but further pleads that the manor of B. extends into the *vills* of B. and T. and that plaintiff was customary of messuages and lands in T. held of the manor of B. and as such hath common in *locus*, &c. for all commonable cattle levant, &c. throughout the year; replication, maintaining avowry, and traverses the prescription, *Wi. Ent.* 912. *Bro. R.* 428.

That defendant, seised of houses and lands, had common of pasture in *locus*, &c. for all cattle levant, &c. throughout the year, and that he took cattle damage feasant; bar, that plaintiff, seised of houses and lands, had common of pasture in the lands

lands adjoining to the *locus*, &c. without severing the hedges, and in *locus*, &c. *per cause de vicinage*, replication, maintains avowry, and traverses prescription, *Bro. R.* 425.

Cognizance as bailiff, damage feasant; plea in bar, that within the manor there were divers customary tenements, demiseable, &c. and a custom that all the customary tenants of the said tenements had sole and several *pasture* in the said *locus*, &c. every year for the whole, as were belonging to the said copyholds, and gave *licence* to plaintiff to put in his beasts; replication, maintaining cognizance and traverses custom, and issue, 2. *San.* 321. Judgment for plaintiff on verdict, and arrested for pleading licence without *deed*.

Similar cognizance by bailiff, mayor, &c. of city of C.; plea, that plaintiff was citizen and freeman, that the city was an ancient city within which there was a custom, that every freeman hath common in *locus*, &c. for two geldings and one cow, or for two cows and one gelding, at his election, throughout the year, and plaintiff put two cows; replication, defendant confesses the custom, but that plaintiff was not free of the city, and issue, *Br. R.* 418.

Similar cognizance; plea in bar, that plaintiff as farmer of T. H. held houses and lands granted to T. H. by copy of court roll of manor of K. whereof *locus in quo* was parcel, within which is a custom that every copyholder and his farmer hath common of pasture in *locus*, &c. for four beasts, namely, geldings, horses, or cattle, and milch rother beasts, in every year from day to day, *Br. R.* 430.

Plea in bar to avowry for damage feasant by a commoner, that the common is extinct by purchase of part, 1. *Bro.* 312.

Avowry for taking cattle damage feasant in freehold; plea, &c. that plaintiff, seised of messuages and lands, had common in the moor throughout the year, and six acres of meadow, &c. after hay carried off; replication, that the moor and meadow are separate, and traverse the prescription, *Ra. Ent.* 559. *Upp.* 90. similar avowry; plea in bar, that plaintiff, seised of houses and lands, hath common in *locus*, &c. for all cattle throughout the year; replication traverses the prescription there, *Ra. Ent.* 559. *Vet. Int.* 48.

Avowry, damage feasant in the freehold; plea in bar to avowry, that plaintiff, seised of the manor, had all the herbage of the land when it lay fallow (*frisca*); replication, maintaining the freehold, and traverses the prescription, *Co. Ent.* 609. Plea in bar, that plaintiff, seised of lands in right of his wife, had common for all his cattle from feast day to festival; replication, *locus*, &c. was several and not common, *Reg. Jud.* 35.

Plea in bar, that plaintiff, seised of houses and lands in the county of Lancaster, had common of pasture for all commonable cattle levant, &c. throughout the year, in lands in the county of York, where the taking was; rejoinder, maintaining the freehold, and traverses prescription; *venire facias* awarded by consent to the sheriff of York, 3. *Br.* 267.

Avowry for cattle taken in a coppice; plea, that the coppice is parcel of a wood called D. containing coppices, of which W. being seised by prescription, cut and inclosed for eight years three or four coppices alternately, and residue were open for common, and that plaintiff, being seised of houses and lands, had common in the open coppice for the large cattle levant, &c.; replication, that the said W. by prescription cut and inclosed three, four, five, or six coppices, and traverses prescription alledged by plaintiff, 3. *Br.* 276.

Avowry, damage feasant in the freehold; plea, that plaintiff, seised of one acre of land called, &c. had common in twelve acres for two years successively, after the corn cut, for all his large cattle levant, &c. until the grass with them should be sufficiently depastured, and afterwards with one hundred sheep until resown, and that every third year, in which it should lay fallow, throughout the year with one hundred sheep; replication, maintaining the avowry, and traverse the prescription, 3. *Br.* 298. Similar avowry; plea in bar, that plaintiff, seised of houses

houses and lands, had *common* of pasture, parcel of the field, every year in which the field was sown with pease from festival to festival; replication, that B. was seised of the manor whereof pasture in which, &c. is parcel, and R. being seised of the said houses and lands held of the manor in socage, and R. within memory enfeoffed B. of, &c. and B. afterwards enfeoffed defendant of the manor, and the *common* thereby extinguished by unity of possession, *non prof.* thereupon, 3. *Br.* 302. Similar avowry; plea in bar, that plaintiff, a vicar, being seised of houses and half a yardland of land in right of his vicarage, had common in two acres of land in which, &c. for two years successively after corn cut and carried off from the field called W. whereof, &c. until resown, and that from time, &c. the field lay fallow; replication, that the vicars had common as well in the said field called W. whereof, &c. as in another field called C. and that one E. seised of two acres in the said field called C. enfeoffed H. then vicar, to hold to him and his successors in fee, and thereby the common was extinguished; rejoinder, maintaining the bar, and traversing the feoffment, 3. *Br.* 318.

Plea in bar to similar avowry, that defendant, seised, &c. had *common*, &c.; replication, that *locus*, &c. lays in a common field where there are other lands in which is *common* of pasture of two acres, of which one R. seised, enfeoffed plaintiff; demurrer, *Her.* 678.

Avowry, damage feasant in freehold; plea in bar, that plaintiff seised of a close of pasture adjoining *locus*, &c. and that defendant ought to repair the hedges, &c.; replication, that the said close of pasture is the freehold of J. and traverse that plaintiff is seised, *Dy.* 365.

That J. seised of a close, demised to defendant for years, who took the cattle damage feasant; plea, that T. seised of twenty-seven acres of land called C. adjoining the close, and that J. ought to repair the hedge and gate between the lands, T. enfeoffed M. and E. his wife, M. died, and E. took to husband, &c. who demised to plaintiff, and through *defect of gate and hedges* being thrown down, cattle entered; replication, that defendant made a sufficient gate, &c. and that there is a way leading through the lands, and the gate hung upon two posts in the ground of defendant, parcel of the way, and that plaintiff pulled up one post and the gate, which he carried, whereby the cattle escaped; rejoinder, that plaintiff before erected a gate upon one post for preserving the corn in defect of defendant's fence, and that he afterwards pulled up the said post and gate, &c. and traverse the gate hanging upon posts in defendant's land, 3. *Br.* 321.

Avowry, damage feasant in the freehold; plea, that H. seised of lands, had common by himself and tenants in a pasture called B. and P. adjoining *locus*, &c. without fences, and in W. whereof *locus*, &c. was parcel, for all cattle throughout the year, H. demised to plaintiff, who put cattle in B. and they escaped over from B. and P. in W. in which, &c. to *common*; special demurrer, *Wi. Ent.* 816.

Avowry, damage feasant by assignee of a term; plea, that within the manor there is a certain custom, that every *copyholder* and farmer hath common of pasture in C. adjoining contiguous to *locus*, &c. for all geldings, mares, and cows levant, &c. throughout the year, that R. was a copyholder of the cottage and lands that plaintiff demised, who put in the cattle to *common*, and that defendant and all those whose, &c. used to make fences between the common and *locus*, &c. through defect of which cattle entered; demurrer, *Wi. Ent.* 928.

Avowry for rent arrear on demise; plea, that plaintiff, seised of one close of pasture near said *locus*, &c. and defendant and all, &c. were accustomed to repair the hedges between *locus*, &c. and plaintiff's close, for defect of which the cattle entered; demurrer, 2. *San.* 284. Judgment for defendant and affirmed on error, *Wi. Ent.* 289.

Cognizance as bailiff of J. B. for damage feasant; plea, by a licence under the devisee M. B. made to him by R. S. lord of the manor of T. to carry coals to the highway by the usual way, &c.; replication, confesses the devise, but says that
at

at the time of the demise the *locus*, &c. was copyhold of the said manor, and that before one sir W. S. the lord granted to T. T. who surrendered to the use of S. T. and his heirs, &c. that before the said demise the said sir W. S. enfeoffed the said R. S. to hold to him and his heirs, &c. and after the said demise the said R. S. enfeoffed of the *locus*, &c. for that the copyhold was extinct, he died seised and it descended to L. his son, who enfeoffed the said J. B. &c.; demurrer, 2. *Lut.* 1241.

Avowry, that W. seised, demised five acres of land to defendant, in which he took the cattle damage feasant; plea, &c. that the said five acres are one close, and that W. and all other tenants whereof, &c. were accustomed to inclose, and that plaintiff is seised of the adjoining land; from which cattle escaped through defect of fences; replication, traverses the prescription or usage, *Ra. Ent.* 561. *Upp.* 111.

Avowry, damage feasant in the freehold; plea, that W. seised of the close called M. demised to plaintiff at will, and defendant and all those, &c. made a hedge between the closes, and the cattle entered through defect of the fence; replication, that plaintiff's cattle violently broke the hedge; rejoinder, that hedge was broken and ruinous, *Ra. Ent.* 561. *Wilk.* 384.

Avowry, that defendant is a *copyholder*, and that within the manor there is a custom, that every tenant should have common in *locus*, &c. for all commonable cattle levant upon the tenements, &c. for a year, and that he took plaintiff's cattle damage feasant, *Wi. Ent.* 912.

Cognizance as bailiff of G. damage feasant in freehold; bar, common of pasture, 1. *Bro.* 304.

That defendant, seised of houses and lands, had *common* in *locus*, &c. for all commonable cattle for the year round, and took the cattle damage feasant; bar, that the rector of the church, seised of the manor and rectory, had *common* of pasture for customary tenants of houses and lands for all commonable cattle for the whole year; replication, maintaining avowry, and traverses the prescription, *Co. Ent.* 573.

That defendant, seised of houses and lands, had *common* in lands, parcel of the manor, from the Purification till the first of August, and plaintiff had all the herbage from the first day of August until the feast of the Purification, and afterwards to the first day of August for three horses only, and that defendant took the cattle surcharging the pasture; bar, that plaintiff, seised of the manor whereof, &c. put his cattle in *locus*, &c.; demurrer, 2. *Br. Rep.* 61.

That defendant, seised of houses and lands, had *common* of pasture in *locus*, &c. for all cattle levant, &c. for the whole year, and that he took the cattle damage feasant; bar, that plaintiff, seised of houses and lands, had common of pasture in lands adjoining *locus*, &c. without fences, and in *locus*, &c. *per cause de vicinage*, and so defendant had common in the said lands *per cause de vicinage*; replication, maintaining avowry, and traverse prescription, 3. *Br.* 299.

That defendant, seised, had common of pasture in the meadow, &c.; bar, that plaintiff is seised of five acres, parcel of the meadow, and put in cattle there to depasture, and traverses prescription, *Her.* 661.

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- For keeping dogs and killing hares, not being qualified ; replication, that he had land and tenements to the value of four hundred pounds *per ann.* and issue, - Ibid. 274
- For amerciament in court baren, for cutting and carrying away furze, called goge, in N. parcel of the manor, 1. *Bro.* 308.
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- Avowry on a warrant of two justices of the peace, for non-payment of a *rate* for relief of the poor ; demurrer ; judgment for defendant, 2. *Lut.* 1179.
- Cognizance as bailiff of the lord of the manor, for an amerciament in the leet *for not repairing a bridge* ; bar, protesting that *locus*, &c. is out of the jurisdiction of the leet ; plea, he took the cattle *de injuria*, &c. *absque non*, that they are used to repair ; issue on the usage, *Pl. Gen.* 508.
- Cognizance as bailiff for an amerciament for not doing suit at the leet, *Pl. Gen.* 508.
- Avowry, that the dean and chapter of Westminster were seised of the manor of D. in fee in right of the church, in which is a custom, that all the tenants of the lands in E. (having common of pasture to their tenements belonging), have used to repair a bridge in E. also another custom for the steward with the assent of the homage to make bye laws, and impose penalties, and the lord to distrain, &c. then the avowant claims title from the dean and chapter ; also a presentment of the bridge being out of repair, with an ordinance that the inhabitants should repair on forfeiture of five pounds ; that the plaintiffs were commoners and inhabitants, and had notice ; that it was afterwards presented.
- Avowry, damage feasant in the freehold held of him and the earl of E. ; bar, that land is customary, and pleads his admission by the defendant and the earl ; replication, that the land is of the annual value of twenty-eight pounds, and *fine* for the admission assessed at thirty-five pounds, and for non-payment, entry, and *forfeiture* ; rejoinder, the value of one year *only* by the custom, 3. *Lew.* 249. ; demurrer, for that the value of land rests in estimation, and that the *custom* is insufficient and prays judgment and a return, together with damages, according to the form of the statute, *Ibid.* 254. Judgment for plaintiff.
- That J. was seised of houses and lands, which he held of the dean and chapter of the church of C. as of the manor of M. by certain services and rents, and by custom upon every alienation in fee, or for the life of any one ; parcel of the lands held of the manor had one year and a half rent, by which such lands were held

- held of the manor in the name of a *fine* for alienation, and for non-payment thereof the lord distrains; J. aliened to W. who aliened to C. and defendant, as bailiff, makes cognizance of taking the cattle for non payment of the said two several fines; demurrer, 2. *Ven.* 131.
- Avowry for a *penalty* for breach of a *bye law* made in the court baron for inclosing lands in a common field, in the same year in which it ought to lay fallow without consent of the tenants having common there, *Wi. Ent.* 899. Bar, protesting that there is no such custom, and that it was not presented by the homage that plaintiff had inclosed, for plea, that defendant *de injuria* took the cattle, and traverses the homage made a bye law; issue, *Wi. Ent.* 900. *Mo.* 75.
- That plaintiffs and others were impannelled on the homage of defendant's court baron, and had a day to give in their verdict until the next court, and then were impannelled on another homage, and were required to give in their verdict, and plaintiff left his companions, for which the steward imposed upon him a *fine* of twenty shillings, for not giving in their first verdict, and ten shillings for the *second*; bar, as to the said twenty shillings, that he offered the verdict and the steward refused to take it; replication, that he did not refuse; and as to ten shillings for the second default; demurrer, *Ra. Ent.* 571.
- That defendant, seised of the manor, had a view of frankpledge, and the jury on the view of frankpledge used annually to elect a constable, who, if present, was then sworn in court, and plaintiff being elected constable, refused to take the oath, *per quod* the steward imposed a *fine* upon him, *Co. Ent.* 572.
- Avowry, similar, where plaintiff, elected constable, was not present at the election, and afterwards refused the office, for which he was *amerced* at another court; bar, that at the time of the election he was not resident within the leet, 3. *Br.* 337.
- That defendant, seised of the hundred in which the *vill* of E. is situate, had a leet twice *per ann.* to which the tithing man and four men of E. were used to appear, and swear to present, and to pay twelvecence for a common *fine*: and plaintiff and the other four appearing, refused to swear, for which the steward imposed a *fine* on each of them; bar, that T. seised of the manor of E. had a leet there for all the inhabitants, and all matters, &c. and traverses that the tithing man and four men were used to be sworn in the hundred to present, &c. *Asb.* 408.
- That defendant, seised of the manor within the hundred and of the hundred, had a view of frankpledge for the manor of all the inhabitants within the hundred, and plaintiff was presented by the jury for a nuisance and stopping a way, and had a day to appear under a penalty, which he did not do, whereof he was presented at the next court, *Co. Ent.* 573.
- That at a view of frankpledge of the manor of defendant, *penalty* was imposed upon plaintiff for not repairing, which he did not, *Wilk.* 283.
- That plaintiff held lands of defendant by fealty rent and suit of court, and was presented at the court baron that plaintiff had inclosed a common pool in which the inhabitants watered their cattle, and part thereof was upon the waste of the manor, and a fine was imposed for his appearance on a certain day, which he did not do, whereof there was a presentment at another court; bar, protesting, &c. for plea, that pool was plaintiff's own pool, and traverses that it was a common pool, *Her.* 683.
- Avowry for amerciamment of a resiant, for not appearing at the leet, *Mo.* 89. 1. *Bro.* 306.
- That the king, seised of the hundred and view of frankpledge of all the inhabitants, granted the hundred to A. for life, and reversion of an abbey in fee; A. died, avowry by the abbot for an amerciamment, and not appearing at the leet, *Ra. Ent.* 553. *Vet. Int.* 200.
- For an amerciamment of chief pledge, for not coming to the leet; bar, that he was resiant within another leet in the same vill, H. 4. E. 3. 27, 28.

For amerciament in the leet of a brewer against the assize; bar, that he was amerced at another leet in the same vill, and for the same default, H. 4. E. 3. 26.

That the abbot was seised by prescription of the hundred and town belonging to him, and the steward and four men of the vill of H. were used on notice to come to the town, and enquire with others of articles, and in default thereof the whole village to be amerced, and the steward omit to attend the town; bar, that prior was seised of the manor, had a view of frankpledge of all resiants twice a year, and the inhabitants of the vill were used to appear there, and not at any other court; and traverse, that the steward and four men of the vill were used to appear at the town of the hundred, *Ra. Ent.* 553. *Vet. Int.* 216.

For an amerciament in view of frankpledges of the manor for purpresture; bar, that the plaintiff had a manor and view of frankpledge belonging to him in the same vill, and that *locus, &c.* is in the county; replication, that plaintiff has not the manor, H. 4. E. 3. 25.

For amerciament in court baron, for surcharging common; bar, by prescription of common; and traverse, that at the time of the amerciament, he was resident within the manor, 1. *Br.* 11.

That defendant is seised of the manor whereof three mills and houses, in which, &c. are parcel, and there is a custom, that occupiers of houses, parcel of the manor, grind their corn at the lord's mill, and in default thereof were amerced, and that plaintiff was amerced for not doing suit at the mill; bar, protesting, &c.; plea, that houses are not parcel of the manor, *Her.* 665.

Bar (for not attending at the leet), protesting, &c. for plea, that he was resiant within another manor; and traverses that he was resident within the lordship and manor of S. 1. *Bro.* 307.

Avowry, for amerciament of a resiant, for not attending leet of defendant, a new grant by letters-patent of the tenement; bar, that in the letters-patent it is provided, that the grant of defendant should not extend to any person who held immediately of our lord the king, as of any manor where the king had a leet, and that plaintiff held of our lord the king houses and lands by fealty, rent, and suit of court of the hundred, service throughout the year; demurrer, *Wi. Ent.* 873.

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Avowry, that J. possessed of lands by extent of statute staple, granted his estate to E. who *demised* to M. who made defendant *executors*, who avow damage feasant, plaintiff *non. prof.* his own writ, judgment for defendant *to have return* of cattle, and enquiry of damages awarded, *Wi. Ent.* 852.

Avowry, by virtue of an attachment out of the county court against N. D.; bar, that plaintiff was possessed, and traverse that N. D. was possessed, and issue, 2. *Lut.* 1196.

Avowry, by virtue of a *levari facias* out of the court baron; demurrer, *Mo. Int.* 310.

Avowry, that J. seised, demised to F. for years, who devised to E. his wife for life, remainder to daughter in tail. M. took to husband D. who granted to plaintiff,

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- who acknowledged *statute staple* to defendant, whereon there was an extent *liberate*; plea, usurious between plaintiff and D.; *nil dicit* thereto, *Her.* 621.
- Avowry, by virtue of a *warrant* of two justices of the peace, for a *poor's rate*; demurrer; judgment for defendant, 2. *Lut.* 1179.
- Cognizance by one defendant, for taking of a cow, &c. as bailiff to sheriff of Y. and two others, as servants, for that one N. D. was possessed of them, &c. and that defendant levied his plaint in the county court against him on *justices* for fourteen pounds debt; precept of summons on it, return, and attachment awarded, delivery of it to defendant, by virtue of which, &c.; bar, that *he* was possessed, &c.; and traverse, that the said N. was possessed; replication, and issue on the traverse, 2. *Lut.* 1190.
- Cognizance as bailiff of a manor, on an execution to levy damages recovered in trespass in the court baron; demurrer, *Pl. Gen.* 514.

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104. plea in bar, that plaintiff, after the said rent became due, and before the taking of the distress, tendered
105. the rent; replication, taking issue on the tender.
105. Avowry, for rent; plea in bar, *de injuria*, &c. and tra-
106. verses the demise; replication, taking issue on the traverse.
106. Avowry 1st, for four year's rent of *locus* from one J. W. who was defendant's tenant; 2d, for four year's rent in arrear from J. W. before he became a *bankrupt*, and from plaintiffs as his *assignees* after his bankruptcy; plea in bar to the first avowry, *de injuria*, and traverse of J. W.'s enjoying the premises; to 2d
108. avowry, *de injuria*, and a like traverse; replication, issue on the traverse.
109. Declaration in replevin for seizing cattle, &c.; cognizance for one quarter of a year's rent; 2d cognizance, *for an increased rent* of five pounds per acre for every acre ploughed up, payable on the same day as the other rent; 3d cognizance, for both rents
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120. of a fee-farm rent issuing out of *locus*; plea in bar, protesting that A. B. was not seised, &c.
121. Avowry, by an *executor*, for rent accrued in the lifetime of testator.
122. Avowry, for undivided moiety of the rent of *locus*; plea in bar, *de injuria*, &c. and traverse the holding.
123. Cognizance, as bailiffs to the mayor, &c. of Newcastle, under a custom to take *toll* of all wine imported therein, they having always repaired the port at their own expence, and because plaintiff refused to pay defendant, well acknowledged; plea in bar, that defendant, *de injuria*, &c. and traverse of the custom;
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127. 128. Cognizance, as bailiff to an administrator *de bonis non*, for rent in arrear in the lifetime of the intestate; plea in bar, admitting the administration, and that defendant was bailiff, but the defendant, *de injuria*, &c.; 2d plea, that he did not hold the *locus* under the demise in the cognizance, until the said time when, &c. or for six months, until the said time when, &c.; 3d plea, that plaintiff was tenant at will to lord P. that he died, upon whose death tenancy at will determined, and the same descended to his two aunts, who demised the same to plaintiff and her husband; husband died, and tenancy ceased; two coheirs demised to plaintiff, who entered, and put the cattle into the premises.

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131. Avowry (for taking cattle, that the *locus* is a waste, parcel of the manor of A. and that one A. B. was lord of the manor, who was accustomed to hold a court baron for the regulation of the wastes, and that at a court leet duly held it was ordered, that no person should turn out any cattle without a drover, and that the court appointed officers to superintend the waste, who, if they found any cattle without a drover, were to impound; that defendant was chosen one of the officers, and because he found the cattle without a drover, avows taking them, damage feasant; 2d avowry.
134. (See Avowry for *Fines* and *Amerciaments*, ante); plea in bar to first avowry, *de injuria*, and traverse of prescription to hold courts, and tender of amends.
135. Cognizance (for taking a spit) the bailiffs of A. B. that the *house* in which, &c. was held of the manor of C. whereof A. B. was lord, by *fealty* and doing *service* at the court baron; that plaintiff being seised of the house, and the lord intending to hold a court baron, of which plaintiff had notice, but he did not appear, whereby the lord was prevented from holding a court, wherefore the defendants well acknowledge the taking as a distress, &c.; plea in bar, that no court baron was held, and that the lord had not been seised of *locus* for the space of forty years, and traverses holding by *fealty*.
138. Cognizance for *part* of a quarter of a year's rent, and a whole half year's rent.
139. Cognizance, damage feasant; plea, that before A. B. had any thing in *locus* queen Elizabeth was seised in fee in right of her *dutchy* of Lancaster, and granted by her letters-patent under the great seal to the corporation of Daventry, a market in *locus*, and two fairs, as by the letters-patent appears; by virtue whereof the corporation were seised; that at one of the fairs the plaintiff bought the sheep, and paid for the toll thereof, and had the sheep in his custody until
140. taken away by the defendants; demurrer.
150. Avowry for half a year's rent in arrear under a demise to the plaintiff of the dwelling-house by the avowant and one P. M. deceased, whom the avowant survived;
151. 2d avowry, to pay the rent quarterly; 3d, half-yearly; 4th, like 2d, but by avowant only.
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- Cognizance to replevin, for taking a brass pan, as bailiffs of lord of the manor; that they took the pan for rent in arrear, and not doing suit of court; plea in bar, protesting that the lord of the manor was not seised of the services aforesaid; for plea, says, that H. T. held the tenements of the said lord of his manor of M. by rent of four pounds *per annum*, payable at the feast of St. Michael only, and traverses that he held the same by rent of four pounds *per annum*, and suit of court; replication, taking issue on the traverse,

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1. H. Bl. Rep. 5

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1. H. Bl. Rep. 465

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4. T. R. 311

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- Replevin, avowry, distress for a fee-farm rent, king James seized, granted, &c. by *mesne* conveyances title in avowant, - - - 1. Stra. 106
- Plea in bar to declaration in replevin, for distraining household goods, that the property was in a stranger, and not in the plaintiff, - - - Lill. Ent. 354
- Plea in bar, 1st, *de injuria*, traverse of the demise; 2d, that defendant evicted plaintiff before the rent distrained for became due, - - - Pl. Ass. 479
- Plea in bar for an avowry, that the plaintiff tendered to the defendant sufficient amends for the damages deficient, - - - Gilb. Dist. & Repl. by Hunt, 286
- Plea of *non cepit* and cognizance as bailiff, that they took the cattle damage feasant on his glebe land, soil, and freehold, - - - Mor. Pr. 600
- Plea in bar, that said H. T. caused the cattle to be wrongfully taken and impounded, and that the same were by fraud taken out of the pound, and driven on the glebe land of the said H. T. to screen their first taking and impounding, and the defendant took the cattle, and unjustly detained the same, - - - Ibid. 601
- Replication, that the cattle were in the *locus in quo* of plaintiff's wrong, - - - Ibid. 602
- Plea to an avowry, damage feasant, that the trespass was involuntary, and a tender of sufficient amends, - - - Ibid. 603
- Rejoinder of tender of a reasonable fine to a replication in replevin, the defendants entered lands for a forfeiture of non-payment of a fine, and afterwards distrained cattle, damage feasant, - - - Lill. Ent. 373
- Avowry, that defendant held the *locus in quo* under a demise from E. N. and the cattle being therein eating up defendant's grass, he took the same as a distress, damage feasant, - - - Mor. Pr. 604
- Plea, that plaintiff's cattle escaped out of the king's highway adjoining unto the *locus in quo* through the defect of defendant's fences, - - - Mor. Pr. 605
- Replication, that the fences were in good repair, and the cattle unruly, and traverses the fences being out of repair; rejoinder, that the fences were out of repair, - - - Ibid. 607, 608
- Replevin, for taking plaintiff's cattle; avowry, that defendant took them, damage feasant; plea in bar, that the place in which, &c. is part of East Field, that plaintiff is seized of eighteen acres of land in B. and claims right of common in East Field for a certain time, and put in her cattle; the defendant replies, that there are in B. two fields, the East and West Fields, and that the owners thereof intercommon while they lay uninclosed for a certain time;

that

that there is a custom to inclose, and that such inclosure is freed from common of any other person, and that the person so inclosing frees and discharges all the uninclosed from all common in respect to such land inclosed; that he inclosed the place in which, &c. whereby all the uninclosed lands were freed from his right of common, and that the place inclosed ought to be free from common of any other person; that the cattle were there of the plaintiff's own wrong, after the said inclosure, doing damage,

1. Wils. Rep. 269

Avowry, taking one horse for rent, and another for not performing fealty, *Ra. Ent.* 576. *Vet. Int.* 92. 3. *Br.* 313. For homage and fealty, and fifty sheep for a relief, *Ra. Ent.* 576. *Co. Ent.* 598. 4. *Co.* 88.

For one ox taken for homage, another for fealty, and another for castle-gard, fine, *wapentagii*, and sheriff's aid, *H.* 3. *E.* 3. 10.

Avowry, homage, suit of court, and rent arrear, *P.* 10. *E.* 3. 45.

Avowry, for part of services undone, *M.* 5. *E.* 3. 3.

Plea in abatement by one avowant by the other, &c. *Ra. Ent.* 569.

Cognizance, of taking for rent and services; and traverses the place of taking, *Tho.* 274.

Plea, that defendant took cattle in L. and not in D. and makes cognizance as the king's bailiff, for that he had *wardship* in parcel of the demesnes of one who held *in capite*, *Pl. Gen.* 545.

Plea, that he took cattle in *alio loco* in the same vill, and avows taking for *services*; replication that it is the *locus* in declaration, *Ra. Ent.* 554. *Her.* 667. Like replication, protesting that *loci* are the same, *Ra. Ent.* 555. *Vet. Int.* 92.

Avowry by defendant, of taking the horse in *alio loco* for *services*, who in driving him to pound escaped to *locus* in declaration, where defendant took them in, *Ra. Ent.* 556. And where defendant came to distrain for *services* in one place, that plaintiff drove cattle to place in declaration, where defendant took them again, *Ra. Ent.* 557.

Plea in bar to declaration, for taking in two places, that he took cattle in place called R. and drove them beyond the places in the declaration to impound; and traverses caption *in locis* in declaration; avowry, for a return, *Her.* 679.

Cognizance for *services* as bailiff, damage feasant; bar, *non ballivus*, *Vet. Int.* 93.

That T. was seised of lands of the *tenure of Borough English*, which by custom descended to his youngest son, and from him to defendant; plea in bar, that M. son and heir of T. seised, demised lands to plaintiff and others, deceased, for their lives; and traverses that lands are borough English, *Asb.* 395.

Avowry for rent on a demise for years by coheirs of L. to whom J. seised, gave in tail general; plea, that J. seised, gave in tail special to J. with remainder to W. in tail; J. died without issue male, coheirs by *intrusion* demised to plaintiff, W. enters and demises to defendant; and traverse gift in tail general, and issue, *Ra. Ent.* 568.



RENT CHARGE.

Avowry for an *annual rent* granted to defendant, *pro consilio impendendo*; plea, that defendant was attainted and committed to prison, so that plaintiff could not have access to him for advice; demurrer, *Dyer*, 2.

For

- For *annual rent* granted by bishop to defendant and A. deceased, for executing the office of supervisor; plea, that the office was not grantable by statute, unless to one person for life; demurrer, 10. Co. 58.
- Avowry, for *rent charge*, and *nomine poenæ*, 3. Br. 316. 1. Br. 24.
- Avowry, for *rent in fee* granted to defendant, *nil dicit*, Vet. Int. 242.
- Avowry, for rent devised to *feme* for life for jointure, 2. Br. 210.
- That H. seised of the manor whereof, &c. granted to dean and chapter *annual rent in fee*; plea, that T. was first seised of manor until H. disseised him; T. re-entered, and grant of the rent was between disseisin and re-entry; replication, that B. seised, gave the manor to H.; and traverses disseisin, Ra. Ent. 558. Vet. Int. 93. Up. 87.
- That D. seised of lands in fee, granted *rent charge*, with *nomine poenæ* to H. in tail, from whom it descended to defendant, who avows for rent, and *nomine poenæ*; plea, that J. was seised of lands; and traverses that D. had any thing at the time of the grant, 1. Br. 24.
- That E. seised of lands, granted *rent charge* for life; plea, protesting that E. at the time of the grant supposed, *had nothing* in the lands; for plea, *non concessit*, 3. Br. 305.
- Avowry, by the *heir*, for *rent* granted to the father in fee, Up. 104.
- Avowry, for *rent charge*; plaintiff pleads demise to him for years, and *prays in aid* of lessor, who joins and pleads that grantor, at the time of the grant, was *within age*; replication, maintains avowry; and traverse that grantor, at the time of the grant, was within age, Up. 101.
- Avowry, for *annual rent* granted *for life*, and unpaid at several days; plea, that grantor, at the time of the grant, was only seised to the use of his will, and that estate determined by his death, Vet. Int. 241.
- Avowry, for ten pounds devised to defendant, with clause of distress; plea, confesses devise, and pleads descent of third part of the lands to four daughters, one of whom, with her husband, levied a fine to uses, and husband, after the death of the wife, demised to W. for years, who *licensed* plaintiff; replication, confesses fine levied and demised, and pleads that he took cattle levant, &c. for annual rent unpaid; and traverses that W. possessed only a fourth part, gave licence to plaintiff to put in his cattle; demurrer, Co. 585.
- Avowry, for *rent for eight years*, devised by father to four daughters by turns, issuing out of lands not devised, 1. Br. 261.
- Avowry, by *executor* for *rent charge* granted by H. to testator for years, if three should so long live, and for *rent arrear* in testator's lifetime; plea, that one K. being first seised, made a feoffment to his own use for life, remainder to the use of his will, and by will devised to W. in tail, remainder to J. in fee; K. died, W. died without issue, J. entered, and enfeoffed plaintiff; replication, confession of feoffment to the use of his will, but says, remainder was limited to said H. who granted, &c.; and traverses limitation of remainder to J. 3. Br. 383.
- That J. seised of a manor, levied a fine to his own use and of his wife for their lives, remainder to W. in tail, and by another fine granted lands to M. after W.'s death for life, if J. and wife should so long live, with render of *rent charge*; W. died; avowry for rent unpaid, plaintiff confesses part unpaid, and to residue; plea, confesses the first fine levied, and pleads another fine levied to the intent to suffer a common recovery, and since said fine, with tender, was levied, by which J. forfeited for life; W. died without issue, R. in remainder in tail entered, and gave licence to plaintiff to put in cattle; replication, confessing the third fine, and pleads recovery according to the uses, and since the said fine with render levied; rejoinder, maintaining bar, and traverses that tenants to the *præcipe* were tenants at the time of the recovery suffered; demurrer, 1. Co. 67.
- That J. seised, levied a fine, with render of *rent* to *husband and wife* and heirs of the

the husband, who devises the rent to wife in fee, from whom descended to defendant; plea, that tenements are not contained in the fine, *Her.* 663.

That J. seised, levied a fine with render of rent, with proviso, that it should not charge the person, and without clause of distress, to the intent that the grantees should pay the rent, *Her.* 667.

That J. seised, suffered a recovery to uses, with intent to grant *rent charge* to servants and friends for lives, and granted a rent to the youngest son for life; plea, an indenture to uses generally; demurrer, *Her.* 646.

Avowry, for *rent charge* granted by one in remainder in tail; plea, a fine levied, and recovery suffered by tenant in tail; demurrer, 1. Co. 54.

That H. seised, demised for years to J. who assigned to R. who devised to L. and made M. *executor*, and L. by consent of executor, entered and granted a *rent charge* to defendant for years, if three should so long live; plea, that since the death of K. M. claims lands as *executor*, and was possessed and made E. executor, who made F. executor, who demised to plaintiff for years; and traverse that M. entered into lands by consent of L. 3. Br. 325.

That J. seised, granted a *rent charge* to E. his daughter in tail, E. took husband W. who was tenant by the curtesy, and died intestate, and administration was granted, who avows for rent unpaid to W. for life; plea, *non est factum*, 3. Br. 339.

That P. being seised of lands, granted a *rent charge* in fee, which descended to E. who exchanged rent for lands with W. from whom rent descended to defendant; demurrer, *Her.* 603. *Wi. Ent.* 931.

That W. seised of the manor, granted the *rent charge* to E. for life, who took to husband P. defendant; plea, that B. made plaintiff an acquittance for rent due after the time in the avowry; demurrer, *Co. Ent.* 585.

That K. seised of the manor, granted to defendant *rent charge* in tail; plea, that defendant, after the death of K. *abated* into lands, whereout, &c. *Co. Ent.* 590.

That W. seised of lands, granted *rent charge* to E. for life, who took W. to husband, who died; plea, that T. being seised of the lands, enfeoffed W. on condition that feoffment should be void on payment of ten shillings, which were paid; replication, that T. confirmed the grant, plaintiff prays to hear the deed of confirmation read; demurrer, 1. Co. 143.

Avowry, for *rent charge*, granted by J.; plea, that M. recovered the debt in B. R. against E. whence an *elegit* was executed of lands of J. who afterwards disseised W. and granted the rent to defendant; W. re-entered, and gave plaintiff licence; replication, confesses judgment, *elegit*, and grant by disseisin, but pleads that W. afterwards demised to defendant at will; demurrer, *Her.* 673. Avowry, *rent charge*; bar, usury, 5. Co. 69.

Avowry for an *annual rent* granted for life and unpaid for one year and a half ended on the feast-day, 1. Bro. 306. *Tbo.* 276.

Similar avowry, with *nomine poenæ*, and rent unpaid for ten years; plea, that grantor, at the time of the grant, was seised in fee tail, and traverses seisin in fee; demurrer, *Tbo.* 269.

Avowry for *annual rent* granted in fee, to be paid at certain feast-days, and unpaid for four years, *Hansf.* 200.; bar, *non concessit*, *Ibid.* 205.; avowry for *annual rent* granted by father for life, and unpaid for three years at a feast day; plea, plaintiff prays oyer of the deed, and demurrer, *Wi. Ent.* 865. Judgment for plaintiff, 866.

Avowry, that A. seised of the manor whereof, &c. granted an *annual rent* to T. in tail, from whom it descended to J. and from him to defendant's wife, who, in right of his wife, avows for rent unpaid for half a year; plea, protesting, &c. for plea, plaintiff confesses the grant of the rent, with proviso, *that it should not charge the person*, and fine levied by tenant in tail, with intent to *extinguish* the rent, and that the manor and premises might be discharged;

- replication, protesting, &c. for plea, that the annual rent is not comprized in the fine; demurrer, *Wi. Ent.* 820. Judgment for plaintiff, *Ibid.* 109.
- Avowry**, that H. senior, and H. junior, being seised of messuages, granted *rent charge* in fee, which descended to defendant; plea, that before H. junior, had any thing in the messuages, H. senior, levied a fine to his own use and his wife for their lives, remainder to H. junior, and his wife for their lives, remainder in tail, descent thereof to H. son of H. junior, who demised to plaintiff; demurrer special, *Wi. Ent.* 837.
- Avowry**, that H. seised of divers messuages and lands, died, they descended to M. and J. coheirs, who make partition of a messuage and lands in S.; there were allotted to J. other messuages, &c. to M. with six shillings and eightpence rent issued out of the lands and tenements allotted to J. by fealty and partition; M. died, and the rent descended to defendant, who avows; plea, protesting that partition between M. and J. was not made, for plea, that H. was seised of messuages and lands in S. in tail, that descended to plaintiff; and traverses that H. died seised in fee, *Mo. Intr.* 308.
- For an annual rent** granted by E. to defendant's father and A. for their lives, for the execution of the office of overseers; plea, that the office was not grantable by the statute except to one person for life; demurrer, *Wi. Ent.* 927. Judgment for plaintiff.
- Avowry**, for annual *rent* granted by the lord of the manor for executing the office of bailiff of the manor, *Mo. Intr.* 319.
- Cognizance**, that W. seised of the manor whereof *locus in quo* was parcel, granted annual *rent* to R. his son for life, issuing out of the manor, and for *rent* unpaid, &c.; plea, that R. seised of the manor, made seoffment to uses in tail, and after divers descents the manor descended to T. in tail, when W. disseised and granted annual rent to R. T. re-entered and demised to plaintiff; replication, maintaining his avowry; and traverses the disseisin, and issue, *Mo. Intr.* 329.
- Avowry**, by prior, for rent issuing out of messuage by prescription, and the usage was to distrain for the same, *Mo. Intr.* 307.
- Avowry**, that R. and L. seised of messuages and lands, granted *rent charge* to defendant's grandfather in fee, who bequeathed the rent to defendant's father, and he granted to defendant, who avows for arrears of the annuity; demurrer, 2. *Ven.* 145.
- Avowry**, by mayor and burgessees, for *rent* arrear on lands by grant made to them so charged, *Clif.* 642. Plea, *non concessit*, *Ibid.* 650.
- Cognizance** for taking *in alio loco* for arrears of *rent charge*, *Clif.* 644.
- Plea in bar to cognizance**, that J. S. did not grant to the mayor, &c. and issue, and further as to the residue, protesting that T. T. did not hold the said house of the said mayor and burgessees, &c. by said *rent* and fealty; for plea, that neither said mayor, &c. nor his predecessors were ever seised within fifty years; replication, that they were seised, and issue, *Clif.* 651.
- Count on a second deliverance**, avowry thereto for an *annuity*, and *nomine poene*, the plaintiff being tenant for years, prays in aid; plea in bar, that a stranger was seised of the *locus* at the time of the grant of the annuity; without this, that the grantor was, &c. *Pl. Gen.* 558.
- Cognizance as bailiff** to W. K. administrator of J. K. that G. G. and R. C. by indenture, after recital of a will of one W. C. grants a *rent charge* of twenty pounds *per annum* to T. K. and J. his wife, and the heirs of the wife, on proviso and agreement, that the *rent* should be paid to them during their lives, and after their decease to the use of the child or children of the wife then living, as soon as the females attain their age of eighteen, and the males twenty-one, and that if the grantees should pay to them at their said ages three hundred pounds equally between them, then the grant to be void, but if default, &c. should be made, then they grant to the said husband and wife, and heirs of the wife, a rent charge of four pounds *per annum*; they have issue three sons, the eldest attains his age of twenty-

twenty-one, and one hundred pounds of three hundred pounds became due, that was not paid; the baron died, and after the *feme* died, for that forty pounds of the said rent of four pounds was in arrear in the life of the husband, makes cognizance as bailiff of *administrator* of survivor of the husband, 2. *Lut.* 1151.

Cognizance as bailiff of D. W. seised in fee, &c. and grants to M. T. and his heirs an annual *rent charge* of fourteen pounds, &c. who died, and it descended to M. W. who covenants with sir W. B. his cousin, to be seised to the use of sir W. B. and his heirs, if the said M. W. should die without any child of his body, and living after his death, and died without issue, sir W. B. granted the said rent charge to N. W. who died seised, and it descended to his four sons, the lands, &c. and the rent issuing out of this is of gavel kind tenure, and for the fourth part of the rent arrear cognizance is made, plaintiff demands *oyer* of the indenture of covenant of M. and W. to be seised, &c.; and demurrer to cognizance; judgment for defendant, 2. *Lut.* 1205. 1210. *Lev. Ent.* 157.

Cognizance as bailiff of R. K. *executor* of F. K. for arrear of *rent charge* granted to testator for his life; demurrer, 2. *Lut.* 1227.

Avowry, by devisee of an *annuity* for term of years, where the grantee devises to his grantor for a certain term, by way of retainer, and after to the avowant, *Pl. Gen.* 579.

Avowry, that R. C. was seised, &c. and devised to T. W. in general remainder to the right heirs of devisor, chargeable with an annual *rent charge* of fifteen pounds to E. C. and the heirs of his body, and to M. C. fifteen pounds, &c. provided that if the said E. or M. should die, leaving no issue, &c. then living, that the survivor shall have the rent for life, both rents to be paid to the heirs of the body of survivor, with clauses of distress; E. marries T. A. they levy a fine of the first rent charge to the use of G. M. in fee, and common recovery is suffered, in which T. A. and wife are vouched, who vouch the common vouchee, &c. which recovery was to the use of the said G. M. in fee, he grants to defendant, attornment, rent arrear, &c. for which avowry is made; plea, before rent arrear of the said E. died without issue; demurrer, 2. *Lut.* 1218.

RENT ON DEMISE.

Avowry and cognizance, that *locus*, &c. is called the Water-house, and that the defendant J. was *possessed* of the place and other closes for term of eight years, and demise them to one W. for seven years, &c. rendering *rent*, and for rent arrear, &c.; plea, that from time whereof, &c. his servants went with cattle to London to make profit, &c. that the defendant J. making cognizance, that the cattle were the proper cattle, by the consent of the said W. the tenant granted licence to his servants to put them up for a night, by which, &c.; replication, that the cattle were levant and couchant, and concludes to the country; rejoinder, that the defendant J. gave licence as above, and traverses the levancy and couchancy otherwise on demurrer, and judgment for defendant, 2. *Lut.* 1161.

Avowry and cognizance, that the *locus*, &c. is a cottage and garden in W. aforesaid; that the said cottage and another cottage in W. aforesaid, from time whereof, &c. till 31st. Dec. Car. 1. and since, were parcel of the said manor of W. and copyhold lands, &c. of which king James the First was seised in fee, and by copy granted them to H. for ninety-nine years, rendering fourpence *per annum* at the usual feasts, the said king, by indenture under the great seal, demises the said manor to sir F. B. and others for ninety-nine years, as by enrollment, &c. the surviving lessees, grant their interest to W. and others, *Rex. Car.* 1. by letters patent under the great seal, granted the reversion in fee to D. and others, *but are not produced*, the grantors, by indenture enrolled, grant to W. B. the grandfather of defendant B. and to N. and L. the assignees of the term for ninety-nine years of the manor,

manor, who *assign* their interest to W. B. the *niel*, N. and L. died, and W. B. survived, and the reversion in fee descended to S. his son, and from him to defendant, and he distrains for all the rent of fourpence *per annum* for fourteen years; plea, protesting that *locus*, &c. was not parcel of the manor, but confesses the indenture to sir F. B. and traverses the grant of Car. 1. to D.; judgment for plaintiff, 2. *Lut.* 1105.

That the king, seised of a manor, granted it in fee to J. from whom it descended to three coheirresses on the part of the mother in default of heirs in the paternal line, who demised to plaintiff for years, rendering rent; plea in bar, that the manor descended from J. to E. in the paternal line, coheirresses demised by abatement, E. entered and demised to plaintiff, and traverses that J. died without heirs, *ex parte paterna*, *Co. Ent.* 596.

That J. seised, demised to plaintiff for years, rendering *rent*, and reversion descended to defendant; plea, that J. after the demise, enfeoffed W. and traverses that he died seised; 2. *Co.* 27.

That defendant, being seised, demised to plaintiff at will, rendering *rent*; plea, that W. died seised of the lands that descended to S. defendant intruded and demised to plaintiff; S. died, and the right descended to E. who entered, before which entry no rent was in arrear; replication, that said W. enfeoffed defendant, who being seised, demised to plaintiff, and traverses intrusion. *Up.* 77.

That W. and A. his wife, seised of messuages and lands by indenture, demised to plaintiff for years in reversion after their death, rendering *rent*; W. and A. entered, and reversion descended to defendant; plea, that at the time of the taking, no rent was in arrear, 3. *Br.* 381.

Avowry, defendant seised of a messuage, whereof, &c. demised to plaintiff for years, rendering rent unpaid, *Ra. Ent.* 568.; plea in bar, that at the time of the taking, no rent was in arrear, *Mo. Int.* 301.

That P. seised of a close, demised to plaintiff for years, rendering rent, and granted reversion to defendant and wife for their lives; avowry, for rent unpaid; plea in bar, *non concessit*, and issue, 2. *Bro.* 244. *Wi. Ent.* 952. Judgment for avowant, *Hob.* 128.

That J. being seised, gave lands to T. in tail general, from whom it descended to A. and B. coheirs, who demised to plaintiff for years, rendering rent; plea in bar, J. being seised, gave lands to T. and his heirs male, remainder to W. in tail; T. died without issue male, A. and B. by intrusion, demised to plaintiff, rendering rent; W. entered, and demised to defendant, and traverse the gift in tail general, *Ra. Ent.* 568.

Avowry, T. seised of manor and land, made a feoffment to use of his wife for life, remainder to K. T. died, K. took to husband S. and levied a fine to W. for years, rendering rent, and clauses of distress; wife and S. levied another fine to uses, W. made A. an *infant*, *executor*, and *administration durante minori etate* was granted to K. who demised to P. and wife levied another fine to H. in fee, who made feoffment to use of defendant, who *avows* for rent reserved on the fine; plea in bar, that the wife of T. after his death, demised to F. for years, who died intestate, and administration was committed to the said K. who took said S. to husband, who with the wife levied said fine with render; demurrer, *Co. Ent.* 591.

That R. seised, demised to plaintiff and others for their lives, rendering rent; reversion descended to M. who sold to defendant by indenture enrolled; bar, by confession of demise and descent; but plea, that W. levied a fine of the reversion to L. who sold to C. by indenture enrolled; demurrer, *Co. Ent.* 595.

That J. with others, being seised, demised to H. for years, rendering rent, reversion descended to W. who expelled H. and afterwards being *non compos*, enfeoffed M. and others in fee, H. re-entered, and reversion descended to E. who sold to defendant, who *avows* for rent unpaid, *Wi. Ent.* 906.

That defendant, seised of houses and lands, whereof, &c. demised to T. for years, rendering

rendering *rent*, and avows for *rent* unpaid; plea, that R. being seised, enfeoffed H. and another to her own use, and M. the wife in tail, and afterwards levied a fine to defendant's father in fee, descent thereof to defendant; R. died, and M. the wife entered and was seised in tail, after possibility of issue extinct, and gave licence to plaintiff to put in his cattle; replication, that R. disseised defendant's father, and enfeoffed H. and another to his use in tail, on whom defendant's father re-entered, and maintains his avowry; demurrer, *Wi. Ent.* 933. That W. seised of reversion of lands on demise for years, rendering rent, levied a fine to his use and of his wife for their lives, remainder in tail, and by another fine W. and wife granted lands to plaintiff's use for life of W. and after his decease to the use of the wife, remainder to plaintiff in fee; W. died, and defendant, as bailiff to the wife, makes cognizance for rent unpaid, *Wi. Ent.* 939.; plea, that the fine between plaintiff and W. and the wife levied, was to uses of plaintiff in fee, to whom lessee for years gave said licence to put in his ox, and traverses that the fine levied was to the uses alledged in the cognizance; issue, and special verdict, *Wi. Ent.* 942.

That W. seised of the manor, demised it to S. for fifty years, and levied a fine of the fourth part of the manor to S. in fee, to whom S. attorned; F. by will devised the fourth part for life to C. who took defendant to husband, remainder in tail to J. who suffered a common recovery to defendant's use in fee, who avows for a fourth part of the rent, *Bro. R.* 421.

Avowry, for *rent* for years, where twelve year's rent is in arrear, *Mo. Ent.* 344. plea, as to part, *payment*, and traverse that it was in arrear as to residue, *always ready* to pay the rent, which he brings into court, *Tbo.* 265.

That B. was seised, and demised to plaintiff for years, and traverses that J. was seised in fee at the time of the taking, *Tbo.* 266.

Plea, confessing demise to J. and descent to H. but says, that J. left the possession of the tenements, into which H. entered, and demised to W.; replication, that he did not enter, *Wi. Ent.* 836.

Plea in bar, tender to part for residue, that at the time of the taking nothing was in arrear, and issue; demurrer to the tender, *Wi. Ent.* 876.

Avowry, damage feasant; plea, by demise to J. V. and grant by J. V. to plaintiff; replication, that demise was with render of *rent* on demand, and re-entry for non-payment; rejoinder, that he was ready to pay, and traverse the demand, and issue, 2. *Lut.* 1131.

Avowry and cognizance, for taking cattle as plaintiff had set out in his Count for rent arrear on the terre-tenant, and within the fee, with divers conveyances as well to plaintiff of the land as to defendant of the reversion, *Pl. Gen.* 500.; bar, to part of cattle, that defendants did not take, as to residue; plaintiff, by protestation, denies the gift in tail; for plea says, that one J. before the gift alledged, was seised, and made prior gift in tail; rejoinder, maintaining cognizance made for rent arrear, and traverses prior gift in tail, *Pl. Gen.* 502.

Avowry, for *rent* granted by fine, *Pl. Gen.* 536. Cognizance for *rent* reserved on demise by court roll, *Clif.* 638. 640. For *rent* arrear on demise by indenture, 642. 645.

Avowry, that J. S. seised in fee of *locus*, &c. by lease and release conveyed to the use of A. wife of sir H. W. for life, the death of sir H. and that after his death demise to plaintiff, rendering *rent* which is in arrear; bar, that R. lord W. was seised in fee, &c. that he devised it to P. B. his second son, in tail male, to hold since the death of S. countess of K. remainder to the right heirs of the earl, the death of the earl and countess, entry of P. B. his death and descent to R. his son and heir, descent from him to N. his brother and heir, and that he was seised until disseised by the said R. F. and being seised by disseisin, made the lease and release; replication, that before the said J. F. had any thing, &c. the said sir H. W. was seised in fee, &c. and enfeoffed the said J. F. and one M. in fee, and avers continuance

- continuance of the possession and seisin for twenty years and more under the aforesaid title, by which the entry of the said P. was barred, and traverses the seisin of P. by J. H. 2. *Lut.* 1199.
- Avowry, made by surviving *executor for rent on lease* so long as three should live; bar, protesting that testator did not grant, but says that the *executor* who died granted to A. D. by deed, who gave him licence, &c.; the avowant makes default, and writ of enquiry awarded, *Thef. Bre.* 150.
- Replevin against two, the one appearing, the other *after the last continuance* died; no process awarded against him, the party appearing avows for rent arrear, *Clif. B.* 653.
- That E. seised in fee demised to B. for seventy years, who demised to F. for thirty years, rendering *rent*; F. built a mill, and made J. his wife *executrix*; B. granted reversion of rent to H. who granted to S. who made E. his wife his *executrix*, who assigned to defendant; plea, that before the demise G. agreed to stand seised to his own use and of his wife for their lives; remainder in tail, and after demised to B. &c. and died; M. entered, and traverses that G. at the time of the demise was seised in fee, 3. *Br.* 389.
- That W. seised, demised to plaintiff and wife for their lives, rendering *rent*, and granted reversion to uses, which descended to co-heiresses, one of whom released to plaintiff *per quod*; part of rent is extinguished, and defendant avows for residue; plea, that W. died seised of reversion, that descended to M. &c. and traverses grant of the reversion, *Her.* 632.
- That J. seised of lands held by knight service, demised to plaintiff for years, rendering *rent*, and devised two parts of the rent to K. his wife for life; reversion and third part of the rent descended to M. and J.; M. died, and his part descended to J. who avows for third part of the rent, *Her.* 658.
- That A. seised of a manor, demised to J. for years, rendering ten pounds and ten quarters of wheat between certain feast-days; J. made A. *executrix*, who took plaintiff to husband, and avows for five quarters, parcel of the rent, *Vet. Int.* 233.
- For *rent* arrear for three years, and defendant avows for rent of two years, *Up.* 105.
- That S. defendant's father being seised, demised to A. for life, remainder to plaintiff for life, rendering *rent*; reversion descended to defendant, who avows for rent, *Her.* 636.
- That W. seised, demised for years to J. rendering rent; J. assigned to F. who made plaintiff executor, and reversion descended to K. who sold to defendant by indenture enrolled, *Her.* 637.
- That N. being seised, gave in tail to D. rendering *rent*; reversion descended to R. who granted to G. from whom it descended to defendant; plea, confessing the gift in tail, but pleads descent of lands to W. who levied a fine to S. who made a feoffment to the use of plaintiff, who seised, and traverses that reversion descended to defendant, *Asb.* 398.
- That W. seised, demised to defendant for years, and defendant demised to plaintiff for years, rendering rent; plea, that before the rent due defendant entered, and expelled plaintiff; replication, did not expel, *Asb.* 411.
- That defendant seised, demised to plaintiff for years, rendering *rent*; plea, that at the time of the taking there was no rent in arrear, *Asb.* 413.
- That defendant's father being seised, demised to K. for lives determinable on three lives, rendering *rent*; reversion descends to defendant, who avows for rent unpaid, *Tbo.* 264. Of a third part of lands, avowry; plea, that W. seised of two other third parts, gave licence to plaintiff to put in his cattle; demurrer, 2. *Ven.* 225.
- That R. seised, demised to J. for years, rendering *rent*; reversion descended to H. and defendant makes cognizance as bailiff, *Wi. Ent.* 836.
- That defendant seised of lands for life, demised to plaintiff for years if defendant should

- should so long live, rendering *rent*, and avows for rent unpaid; plea, by plaintiff afteroyer of demise; demurrer, and judgment for defendant, *Wi. Ent.* 868.
- That E. seised of houses and lands, demised to plaintiff for life, rendering *rent*, reversion descended to defendant, who avows for rent unpaid, *Wi. Ent.* 875.
- That G. seised of houses and lands, demised to W. and A. his wife for their lives rendering to whom (the wife) W. attorned; W. and wife died, plaintiff entered; and reversion descended to R. who by indenture entolled sold to defendant, *Wi. Ent.* 849.
- That P. seised of lands, demised to plaintiff and others, rendering *rent*; P. levied a fine to his own use and of the wife for their lives, remainder in tail, and died; wife took G. to husband, and defendant makes cognizance as their bailiff, *Wi. Ent.* 826.
- That E. seised of a parcel of land lately enclosed upon which was a stable newly built, demised for years, rendering *rent*; reversion descended to H. who sold to defendant by indenture enrolled, *Wi. Ent.* 870.
- That mayor, bailiffs, &c. of city of C. being seised of lands, demised to T. for years, who assigned to defendant, who demised part thereof to plaintiff, rendering *rent*, and defendant avows for *rent*; plea in bar, *non dimisit*, and issue, 2. *San.* 310.; judgment for plaintiff on verdict affirmed on writ of error in B. R.
- That J. being seised of lands, demised to B. for life, remainder to plaintiff for ninety nine years, if two should so long live, rendering *rent*; J. and B. died, plaintiff entered, and reversion descended to four daughters and two cousins, one of whom sold her part to defendant, who avows for sixth part of *rent* unpaid, *Wi. Ent.* 895.
- Cognizance as bailiffs to a person who died since the last continuance for *rent* reserved on owelty of partition between co-heirs; plea, protesting no partition; for plea, that the ancestor was seised for life, remainder to plaintiff in tail; *absque hoc*, that ancestor was seised in fee, *Pl. Gen.* 508.; issue on the traverse, 512; joinder in aid by summons to aid, and two of the prayees plead *bors de son fe.*; and the other disclaims; rejoinder within fee and issue, and *taxatio damp.* on the disclaimer till issue tried, *Pl. Gen.* 512.
- Avowry for *rent*, that plaintiff is his tenant by copy; bar, *confirmation* by defendant to plaintiff and his heirs since *demise* by copy, and issue, *Pl. Gen.* 553.
- Avowry by *baron and feme* in right of his wife, and cognizance by another as bailiff to them, as guardians in socage for *rent* arrear; plea, grant of the wardship of the wife while sole to H. B. to whom he paid the *rent*; replication, maintaining the plea, and traverses the grant made to H.; rejoinder, and issue on the grant, *Pl. Gen.* 564.
- Cognizance for damage feasant by re-entry on the plaintiff being lessee for years for *rent* arrear; plaintiff maintains demise, and traverses the demand, *Pl. Gen.* 570.
- Cognizance made as bailiff to a copyholder for *rent* reserved on a lease to plaintiff; plea, that the plaintiff had licence by one who had title of the king, who had it by dissolution, and traverses the lease being made to him, *Pl. Gen.* 511.
- Avowry, that the *locus*, &c. contains a house in the parish of C. and avows for *rent* reserved on a lease made by him to J. P.; demurrer; avowry bad, for that the place of the taking in the count was not traversed, 2. *Lut.* 1147.
- Avowry according to the statute 32. Hen. 8. for *rent* by *executors*, *Clif.* 646.
- Cognizance as bailiffs of the dean and chapter of the cathedral in the city of C. for *rent* arrear on a demise made of *locus*, &c. by letters patent, *Clif.* 647.
- Plea, confession of seisin in P. and *demise*, rendering *rent* thereout to P. and the heirs of his body, who died without heirs, and traverses that the *rent* reserved was as set out in the cognizance; demurrer special, *Wi. Ent.* 829.
- Plea, that the stable was parcel of a common inn in which plaintiff as a guest was lodging, and the horse was feeding; judgment if he ought to take the horse; demurrer, *Ibid.* 872.
- Plea, that the daughter who sold when sole made an indenture to uses in tail, with

proviso, that if she or any issue in tail should attempt to discontinue the entail, the estate of such person should cease, and the next use should take place; the daughter took *husband*, and with him levied a fine, and the estate came to the wife of plaintiff, the next use, who put in the cattle; demurrer, *Wi. Ent.* 896.

Plea, after confession of the declaration and insanity of W. but that W. when *compos mentis* enfeoffed M. and others, on whom H. re-entered and assigned to plaintiff, who put in his cattle, and traverse that W. at the time of executing the feoffment was *non compos mentis*, and issue, *Wi. Ent.* 907.

That before re entry nothing was in arrear, *Mo. Int.* 302.

On a demise made by the avowant; plea, that avowant did not demise on the said first day of November, &c. but held bad, for that the first day is not traversable, 2. *San.* 314.

Plea, that T. did not demise to P. tenant aforesaid, *modo et forma*, and issue, *Cliff.* 641.

Avowry for cattle in the declaration and other cattle replevied for rent in arrear on demise of a house in right of the wife, *Wi. Ent.* 643.

Plea in bar, nothing in arrear to part; to the other part, *tender* before distress, and no demand made afterwards, *Cliff.* 646, 653. Replication, issue on tender, 654.

Cognizance as bailiffs of R. M. since several descents by fine for *rent* arrear; plea confesses seisin in fee of S. M. but says that before the making the indenture aforesaid S. made feoffment to the use of said R. M. for his life if the said S. should so long live; and that if he died in the lifetime of the said R. then to the use of the said R. M. and his heirs during the life of the said Robert, and so long as the said Robert had heirs of his body; that Robert was seised, and S. died in the lifetime of Robert, and that Richard entered, and was seised, and made the demise in the cognizance, and after granted the reversion to one T. M. in fee, and that plaintiff attorned to him, and traverse that the said S. M. was seised in fee at the time of the fine levied, *modo et forma*, &c. and issue; verdict and judgment for plaintiff, 2. *Lut.* 1608.

Avowry, that H. in his lifetime enfeoffed R. in fee, who demised to plaintiff; defendant took plough and hay *de injuria sua propria*, and traverse that lands after the death of H. descended to J.; demurrer, *Wi. Ent.* 841.

That J. seised, demised to plaintiff for years, of whom plaintiff prays in aid; and J. being summoned, comes and joins plaintiff, who pleads that J. held lands of defendant by fealty and rent of nine shillings and suit of court for all services, and traverses that he held lands as in the cognizance alledged; demurrer, *Wi. Ent.* 863.

Avowry, plaintiff confesses and further pleads that T. enfeoffed plaintiff, who at a day certain upon the tenements was ready and offered to pay annual rent, and no person was there on the part of defendant to receive it; replication, protesting that he did not offer; for plea, that defendant after the day on a parcel of the tenements demanded the rent, and neither the plaintiff nor any one for him paid or offered to pay; judgment for avowant, *Wi. Ent.* 919. *Hob.* 207.

Plea, protesting that A. did not hold the manor by such *services*; for plea, that neither defendant's father or his ancestors were seised of the same services; demurrer, *Wi. Ent.* 926.

Plea in bar, confessing T. was seised and held by services alledged, and traverses that *locus* was parcel of those tenements, and like plea to avowry for rent unpaid, *Wi. Ent.* 930.

Plea, confessing that E. was seised and held by *rent* and *service*; which he paid and performed, and traverse that he held by such service as in the avowry stated, *Bro. R.* 416.

Plea to avowry, nothing in arrear; without this, that he was seised of parcel of the services, and issue on the seisin, *Pl. Gen.* 273.

Plea in bar, that W. did not die in the *homage* after essoign in aid; prayer, *Mo. Int.*

Avowry,

Avowry, that plaintiff holds croft of land whereof, &c. by fealty and rent, and avows for rent, *Ra. Ent.* 224.

That defendant and *wife* held of defendant as of his manor eight acres, whereof, &c. by *homage*, fealty, scutage, rent, and suit of court from defendant seized by the hands of husband and wife, which estate, &c. and avows for the rent, *Ra. Ent.* 554.

That T. held of defendant a prior as of his manor, the lands by fealty and rent, and avows for rent, *Ra. Ent.* 555. *Vet. Int.* 234, 244.

Traverse of *locus* &c. and for return avows that J. held the lands of P. as of the manor; by certain services manor descended to W. from him to defendant, and plaintiff has the estate J. had in the lands, *Ra. Ent.* 555.

That W. was seised of ten acres of land whereof, &c. held of R. as of the manor by fealty and rent, which estate plaintiff has; manor descended to C. from him to J. who enfeoffed B. who demised for life, remainder in tail to defendant, who avows for rent; plea in bar *de injuria propria*, and traverses that *locus*, &c. is parcel of the lands held by defendant, *Ra. Ent.* 556. *Vet. Int.* 93.

That T. was seised of half a yard land held by the bishop, which estate, &c. avows for rent, *Ra. Ent.* 557. That T. was seised of seven acres of land held of defendant as of the manor, which estate, &c. and avows for rent, *Ra. Ent.* 565.

That *husband* and *wife* were seised of the manor, and W. seised of lands whereof, &c. held of the manor, *que estate*, and avows for rent, *Ra. Ent.* 565.

That W. and A. his *wife* were seised of lands held of R. as of the manor by homage, fealty, scutage, rent, and suit of court, whereof R. was seised by hands of A. whilst sole, the manor *inter alia* descended to H. within age, and seised into the hands of the king, who assigned to defendant, a widow, the rent *inter alia* for dower and for rent; she avows, *Ra. Ent.* 556.

Avowry, that W. seised of lands whereof, &c. held of the manor whereof H. being seised, gave it to A. and E. his wife in tail, W. gave lands to plaintiff and wife in tail, manor descended to defendant, who avows for rent, *Ra. Ent.* 574. *Vet. Int.* 91. That R. was seised of lands and houses whereof, &c. held of prior defendant *que estate*, and avows for rent, *Ra. Ent.* 574.

That abbot held two crofts of land whereof, &c. of defendant as of manor, and avows for rent, *Ra. Ent.* 574.

That J. seised of lands whereof, &c. held of A. by fealty, rent, and suit of court of the manor, *services* descended to defendant, and lands descended to three daughters, who gave them to plaintiff, *Ra. Ent.* 575.

That plaintiff was seised of lands held by certain services of W. as of the manor; W. enfeoffed defendant of his manor, to which plaintiff attorns, and avows for rent; plea in bar, that he held lands of the bishop by certain *services*, and traverses attornment to the feoffment, 9. Co. 83.

That defendant's father was seised of the manor, and T. was seised of the lands held of him by certain *services que estate*, manor descended to defendant, who avows for rent and suit of court, *Ra. Ent.* 224. *Vet. Int.* 151.

That T. was seised of a croft held of N. by homage, fealty, scutage, and rent; services descended to defendant, and plaintiff has the estate of T. in part of the land, and avows for rent of twenty *nisorum*, and homage and fealty, *Ra. Ent.* 556. *Vet. Int.* 92.

That plaintiff's father was seised of lands held of defendant's manor by homage, fealty, rent, suit of court, and heriot; lands descended to plaintiff, and avows for *homage*, fealty, and rent, Co. Ent. 598.

That late master of a hospital was seised of lands held of J. as of the manor; J. demised the manor to W. who made defendant executor, who avows for rent, *Vet. Int.* 234.

Cognizance as bailiff of T. M. and that G. lord C. was seised of, &c. and held of the said T. M. as of his manor, &c. by fealty and rent of three pounds eight shillings and eightpence, &c.; that premises descended to J. lord C. as son, and

makes cognizance for three pounds three shillings and threepence for *rent* arrear, and for other three pounds eight shillings and eightpence for relief after the death of G. lord C. ; plea in bar as to rent, tender, and refusal, and as to relief, demurrer, that it does not appear that the said T. M. had title to have the relief aforesaid, and judgment for the cognizance, 3. *Lev.* 141.

Cognizance as bailiff to W. M. that H. T. was seised in fee of a messuage held of W. M. of his manor of M. by fealty four pounds rent and suit of court, and makes cognizance for the *rent* arrear and suit of court unpaid ; plea in bar, for that the plaintiff confesses a tenure by the rent of four pounds only, and traverses the tenure alleged in the cognizance ; replication, and issue on the traverse ; judgment for defendant, 2. *Lut.* 1211.

Avowry as to taking of cattle for *customs* and services at one place, and *non cepit* pleaded as to another place ; and after verdict, judgment for the avowant, *Thes. Br.* 121.

That C. seised of the manor of H. held of P. of the manor of W. by fealty and thirteen pounds rent, enfeoffed J. of one parcel, T. of another parcel, and A. of the residue, that descended to E. ; P. had notice of the several feoffments, and received seven pounds ten shillings rent for E.'s part only, which estate J. and H. have from P. ; E. demised to plaintiff, who *tendered* the rent ; replication, that P. had no notice, nor received the rent ; and for plea, that E.'s part in the manor was of the annual value of seven pounds ten shillings only ; demurrer, *Wi. Ent.* 824.

Plea, protesting that J. did not hold by *service* in the cognizance alleged, defendant was not seised of the rent within fifty years, *Mo. Int.* 322. Without protestation, *Ibid.* 300.

Avowry, that plaintiff is seised of lands held of defendant by *fealty*, *rent*, and several services of husbandry, for rent and other services for two years, *Tho.* 271. *Mo. Int.* 318.

Traverse of *locus* and *for return* that plaintiff seised of lands held them of H. as of the manor by fealty, rent, and suit of court, from whom defendant was seised by the hands of plaintiff, and defendant as bailiff of H. makes cognizance for rent arrear, *Tho.* 274.

Cognizance, that E. seised of the manor of K. held of J. and H. as of the manor of W. by *fealty* and *rent*, from whom J. and H. were seised by the hands of B. and defendant as bailiff makes cognizance for rent unpaid, *Wi. Ent.* 823.

Cognizance, H. seised of lands held them of W. by fealty, rent, and suit of court ; lands descended to J. and defendant as bailiff took plough and hay for *fealty* unperformed, and *relief* unpaid, *Wi. Ent.* 850. *Mo. Int.* 344. For *relief* only, 328.

Avowry, that plaintiff seised of the manor of C. held of defendant as of his manor by *homage*, *fealty*, *scutage*, and rent. of which rent defendant was seised by hands of plaintiff for homage unperformed ; special demurrer, *Wi. Ent.* 859. *Wi. Rep.* 31.

That J. was seised of lands held of defendant as of the manor by *fealty*, *rent*, and *suit of court*, whereof defendant was seised by hands of J. and avows for rent unpaid, *Wi. Ent.* 863.

That T. seised of lands, held them of G. H. as of the manor of L. by *fealty* and rent, of which the queen was seised by the hands of T. ; manor descended to King James, who sold to G. who sold to defendant, who avows for *rent* unpaid, *Wi. Ent.* 918, 930. Similar avowry by suit of court unperformed, *Wi. Ent.* 929.

That T. was seised of the manor of M. and A. was seised of the manor of H. held to T. by fealty and rent, whereof T. was seised by the hands of A. then tenant ; manor of M. descended to defendant, who avows for fealty unperformed, *Wi. Ent.* 925.

Avowry, that E. was seised of lands held of defendant as of the manor by *fealty*, *rent*,

- rent, and other *services*, of which defendant was seised by the hands of E. and rent unpaid, and for other services unperformed, *Br. R.* 416.
- Avowry, H. seised of manor whereof, &c. granted to plaintiff in fee to hold by knight service and annual rent; the manor descended to E. 6. and from him to queen Mary, who granted the *services* and *rents* to defendant, who avows for rent unpaid; plaintiff *not pros*; judgment, *Mo. Int.* 324.
- Avowry, father held lands of defendant by fealty, suit of court, and *heriot*; avows for the *heriot*, *Mo. Int.* 306. Avowry for *heriot* service, *Tbo.* 267.
- Cognizance by bailiff of governor of Charter House, in the county of Middlesex, for rent arrear, *Clif.* 637. Plea, that J. B. did not hold the manor of B. of the said governor by service and rent aforesaid, *Mo. Int.* 638.
- Avowry, R. seised of lands which he held of O. as of the manor of N. by fealty, rent, and suit of court, of which O. was seised by hands of R. the manor descended to S. who sold to defendant by indenture enrolled, who avows for rent unpaid; bar, protesting that cognizance was not true; plea, that O. never was seised of services aforesaid by the hands of R. and issue, *Mo. Int.* 338.
- That Hen. 6. seised of an annual rent of twelve pounds issuing out of the manor of H. granted ten marks thereof to the lord T. with power of distress as the king could by act of parliament, the rent by divers descents and grants came to defendant; plea, that lands in which, &c. were copyhold, and queen Elizabeth seised of the manor, granted lands to K. from whom they descended to plaintiff, who put in his cattle; demurrer and plea held bad, *Wi. Ent.* 915.
- Avowry for annual rent granted to chancellor, masters, and scholars of the university of Oxford, with clause of distress, *Tbo.* 273.
- Avowry, that C. seised of the honor, castle, and manor whereof, &c. granted rent charge to D. of H. in fee, which came to queen Elizabeth by attainder, and further to Jac. 1. who granted to H. from whom it descended to T. who granted to defendant; plea, that H. seised in *locus* enfeoffed W. and E. his wife in fee; W. died and survived, who demised to plaintiff, who prays in aid of her, who joins, protesting that *locus in quo* was not parcel of the honor and manor at the time of the grant of the annual grant; for plea (same plea), traversing that T. did not grant to defendant, *Wi. Ent.* 841.
- That R. seised of lands, devised rent charge with clause of distress and avowry for rent unpaid; plea confesses devise, and pleads that a third part of lands descended to four daughters, one of whom died, and her purparty, which was a twelfth part, descended to B. who enfeoffed W. who demised to plaintiff; replication, confessing descent and enfeoffment; pleads that P. seised of the other two parts, enfeoffed W. of them, who devised to plaintiff as well the two parts as the twelfth part, and traverses that plaintiff was possessed of twelfth part only; special demurrer, *Wi. Ent.* 889. Judgment for defendant, *Heb.* 80. *S. Co.* 83.
- That J. seised of lands, granted a rent charge to S. in tail, with clause of distress; S. made M. executor, who made avowant executor, and defendant as his bailiff makes cognizance for rent unpaid in the lifetime of S.; plea, that before J. had any thing A. seised of lands held in *capite*, demised to H. for years, and granted the reversion to J. in fee, to whom H. attorned; then J. granted the rent to S. reversion descended to C. in the custody of the queen, who demised the reversion to R.; S. died, and the term expired; R. made W. executor, who demised to plaintiff; demurrer, *Wi. Ent.* 901.
- Avowry, that Car. 1. seised of the manor, &c. demised *locus in quo*, parcel thereof, to G. for years, who granted an annual rent during the term to defendant, who avows for rent unpaid; plea, that certain persons, sitting as lords of parliament, ordered that the indenture of demise made to G. should be cancelled, and their proceedings were made valid by act of oblivion; demurrer, 1. *San.* 187. Judgment for defendant, 194.

- Avowry in right of *wife* for annual *rent* devised to her *sole* for life by the last will of J. with clause of distress; demurrer, 1. *San.* 195. Judgment for defendant.
- Avowry for annual rent issuing out of the manor whereof H. granted to defendant for life by R.; plea, that one E. before seised, by will devised two parts of the manor of R. for life, remainder in tail to J.; R. died, and J. entered and demised to plaintiff, and traverses that R. at the time of the grant was seised in fee, *Br.* R. 419.
- Avowry for annual *rent* granted to defendant for services done; plea, that plaintiff requested defendant to serve, and defendant refused, *Mo. Int.* 381.
- That J. seised of lands held of defendant by homage, fealty, rent, &c. enfeoffed M. who devised two parts to W. in fee, and avows for homage, fealty, and two parts of rent; aid; prayer, *Br.* 308.
- Avowry for *castlegard*; bar, that castle is destroyed; demurrer, 4. *Co.* 88. *Mod.* 1.
- Avowry for eleven pounds *rent*, and money assessed for a *talliage* at defendant's will; bar, that he holds by *certain service*, and nothing in arrears.
- Avowry to an old ancient count, and issue on the *services*, 2. *Inst.* 9.
- That plaintiff prior was seised of lands held of defendant, an abbot, by fealty and suit of court, and that every tenant of the prior should put his beasts into the fold of the abbot, plough the lands, and measure the corn, and that prior should be amerced and distrained upon for not doing suit of court, and avows for twice omitting to do suit, and not putting sheep into the fold, *Ra. Ent.* 573.
- That plaintiff is seised of lands held of defendant by fealty, rent, and divers services, and avows for rent and divers services for two years, *Ra. Ent.* 575. *Upp.* 90.
- That plaintiff holds houses, mill, and lands called, &c. lately of one W. in several vills whereof, &c. of defendant as of the manor, who avows for rent and suit of court, *Ra. Ent.* 575.
- That A. was seised of lands whereof, &c. held of L. as of the manor by fealty, rent, and suit of court, *que estate*, manor and services descended to defendant, who avows the taking of one horse for rent, and of another horse for fealty, *Ra. Ent.* 576. *Vet. Int.* 2.
- That R. was seised of lands held of J. as of the manor; J. enfeoffed W. of the manor, which descended to defendant *que estate* in the lands, and avows for not ploughing land and cutting corn, *Co. Ent.* 599.
- Avowry for fealty and relief, *Reg. Jud.* 78.
- That plaintiff held lands of J. as of the manor by several services; J. enfeoffed defendant of the manor, to which plaintiff attorns, and defendant avows taking one beast for homage, another for fealty, and another for castlegard, fine of the wapentake, and *sheriff's aid*, *H.* 3. *E.* 3, 10.
- That plaintiff held of C. as of the manor by certain services, manor descended to defendant, who avows for homage, suit of court, and rent; bar, defendant's great grandfather granted lands to the grandfather of defendant in frank marriage; replication, that he was seised of the services, *P.* 10. *E.* 3, 45.
- That J. held land of defendant as of the manor by fealty, rent, two days labour, suit to his mill, and suit of court; lands descended to the daughter, who took plaintiff to husband, and avows for two days labour and suit at the mill; bar by title by descent, and traverses the tenure, 1. *Br.* 17.
- That N. was seised of lands held of R. by certain services whereof, &c. services descended to defendant, who hath the estate in the lands, and avows for the homage and rent; bar after aid prays that he holds by other services, *Upp.* 84.
- That R. was seised of four houses and lands held of E. as of the manor by homage, fealty, scutage, rent twelve pounds and pound of pepper, suit of court, and four heriots; manor descended to T. who sold to defendant by indenture enrolled, who hath the estate in the lands, and avows for homage, fealty, and suit of court, 3. *Br.* 333.
- That J. was seised of manor of W. held of the king's manor by homage, fealty, scutage,

scutage, rent, and suit of court; king granted to R. in tail, remainder in tail to N. from whom it descended to defendant, who avows for two reliefs, homage and fealty, suit at different courts, and aid for the daughter's marriage, *Her.* 639.

That H. seised of moiety of lands held by fealty, ren, suit of court, and heriot of defendant's manor, died possessed of the beast taken for an heriot, &c.; bar, protesting that he was not seised of the services; plea, that H. held moiety of E. as of the other manor, by fealty and rent; and traverses defendant's tenure, 3. *Br.* 396.

Avowry, of taking three cattle, oxen, severally, for several customary heriots, for several lands held of defendant in right of his wife; bar, as to one, protesting no cognizance; plea, *de injuria propria*; traversing that he held lands of defendant; *modo et forma* as to the other beast; protesting, as before; plea, *de injuria*, &c.; and traverses the custom of heriot, and so of the third, 3. *Br.* 313.

That T. seised of houses and lands, whereof, &c. held of queen Elizabeth by fealty, rent, suit of court, and heriot; manor descended to king James, who granted to D. who sold to defendant by indenture enrolled, and avows for heriot on the death of the tenant; bar, that T. held lands of the queen by fealty and rent; and traverses the tenure by *services* alledged, *Her.* 604.

That W. seised of lands, held of defendant as of the manor, by fealty, suit of court, eight pounds rent, and, after the death of each tenant, a *horse* with *briale*, &c.; W. died, and defendant avows for *horse*, &c. 3. *Br.* 349.

Avowry, on several takings, for *inclosing Bishop's Park* unperformed, and the *aid* on creation of the bishop unpaid, *Her.* 628.

Avowry, by executors of H. of whom W. held lands by certain *services*, that lands descended to coheiresses for *rent* due to H. after death of W. *Her.* 669.

Avowry, by tenant in tail by fine, and render for *rent of service* due by prior, *Upp.* 93.

Avowry, on tenure of manor by fealty, rent, and suit of court, 3. *Br.* 273.

That plaintiff was seised of lands held of manor of defendant by fealty, rent three shillings and fourpence, and one *pair of gold spurs*, and suit of court and avowry for six shillings and eightpence rent, 3. *Br.* 332.

That H. held lands of W. by fealty, rent, &c. W. enfeoffed defendant of the manor, and plaintiff seised of the lands attorned; plea, that he was seised of lands held by fealty only, and traverses attornment; special verdict, that he was within age at the time of the feoffment, *Her.* 631.

That R. was seised of lands held by fealty, homage, scutage, &c. manor descended to defendant, who avows for homage, 4. *Co.* 6.

That plaintiff's grandfather held the manor of R. by homage, &c. manor descended to the daughters, and afterwards *services were charged* by indenture, and for that different services were unperformed, defendant avows for homage, P. 10. E. 3. 41.; similar avowry for part of services, M. 5. E. 3. 3.

Avowry, protesting that all the rents and services are in arrear, and rent unpaid for six years, *Ra. Ent.* 576.

Plea of disclaimer by plaintiff to hold of defendant, and judgment for plaintiff, *Ra. Ent.* 224. 561. Similar plea by plaintiff, aid, prayer, *Ra. Ent.* 225. Replication, that J. after the last continuance, disseised plaintiff, and he is tenant; rejoinder, that whoever prays in aid is tenant, *Ra. Ent.* 561. *Vet. Int.* 91.

Bar, protesting that he was not seised of the services; plea, that he did not hold *modo et forma*; replender awarded, and plea *hors de son*, see, 3. *Br.* 329. That *locus*, &c. is out of his freehold; replication, that it is within, &c. *Ra. Ent.* 565. *Upp.* 83. 97.; and replication, that it is within the freehold, and not out of it, *Ra. Ent.* 566.

Plaintiff prays in aid of lessor, *Co. Ent.* 574. 598.

Plaintiff plead that he holds the lands jointly with his wife by gift in tail, and prays in aid of his wife, *Ra. Ent.* 574. *Vet. Int.* 91.

Plea in bar, protesting that A. never was seised of suit of court, for plea, that he held of A. by fealty and rent, and A. granted the rent and services to W. in fee; replicat on, maintaining the avowry, and traverses the grant, *Ra. Ent.* 575.

Avowry, for services; bar, that he took the cattle, *de injuria*, &c.; and traverses that *locus*, &c. is parcel of ten acres held of defendant, *Ra. Ent.* 556. *Vet. Int.* 93.

That he held lands as of the manor of M. and traverses that he held of defendant as of the manor of S. *Ra. Ent.* 573.

Traverse of *locus*, and *for return* avows that J. seised of the houses held of the prior, defendant's predecessor, by homage, fealty, and suit of court, lands descended to W. and from him to plaintiff, and avows for *relief* unpaid, and homage and fealty unperformed, *Ra. Ent.* 555. *Vet. Int.* 92.

That plaintiff held lands of defendant as of the manor, by certain services whereof defendant's grandfather was seised by hands of L. then tenant *que estate*, manor and services descend to defendant, who avows for homage and suit of court, *Ra. Ent.* 565. *Upp.* 83.

Avowry, taking horse for homage and fealty unperformed, and sheep for fifty shillings, for *relief* unpaid, *Ra. Ent.* 576.

That plaintiff was seised of lands held of defendant and others, as of the manor, by homage, fealty, scutage, suit of court, annual rent, and rent of two shillings and sixpence for a fine of which twenty-four weeks for Castlegard, by which rent of two shillings and sixpence defendant hold the same tenements of the said castle, of which *services* (except homage and fealty) defendant and others were seised by hands of plaintiff, and avows for rent of fourteen shillings and rent of two shillings and sixpence unpaid, and homage and fealty unperformed, *Ra. Ent.* 566. *Upp.* 95.

Plea, that he holds by fealty and rent of four shillings, of which nothing is in arrear, and that defendant levied rent of six shillings for divers distresses, and traverses that he was seised thereof by plaintiff's hands, *Ra. Ent.* 577. *Vet. Int.* 93.

Bar, protesting that the father did not hold by service alleged, plea, that defendant was not seised of services, 4. *Co.* 6. *Upp.* 95. *Ash.* 415. When within forty years, 1. *Co.* 64.

Avowry by feoffee of manor; bar, that plaintiff some time held of feoffor, who before feoffment granted plaintiff's *services* to A. to whom he attorned, and traverses attornment to the feoffment, *II.* 3. *E.* 3. 10.

That plaintiff holds of defendant by fealty, rent twelpence, and suit of court, and traverses tenure by the services alleged, *Co. Ent.* 598. *Upp.* 84, 85. 91, 3. *Br.* 349. 273. 333.

That he holds the manor by service of sixpence or a pair of gold spurs, and traverses seisin of the homage; demurrer, *P.* 10. *E.* 3. 41.

That H. seised of the manor and lands before the statute of *Quia Emptores*, enfeoffed S. of the lands to hold by fealty and rent of one pair of spurs, which estate in the manor, &c. and in the lands, &c.; replication, maintaining avowry, and traverses estate of S. in the lands, 3. *Br.* 332.

That plaintiff held lands of defendant by fealty, and rent paid at a day certain, when defendant avowed for fealty and rent, payable at two certain feast days, and suit of court, and as to taking one horse for rent; bar, no rent arrear, and traverse that he holds by rent payable at two festivals, and as to taking the other horse for fealty; bar, that he offered to do fealty to defendant which he refused; replication, did not offer, *Ra. Ent.* 576. *Vet. Int.* 92.

That he held lands by service of eight shillings *per ann.* and one fish only, and traverses that defendant was seised of homage, fealty, and suit of court, *Ra. Ent.* 576. That he held houses by fealty, rent, and suit of court, of which nothing is in arrear, and traverses that defendant was seised of the homage, *Ra. Ent.* 576. *Vet. Int.* 92.

Bar,

Bar, protesting that tenements are not held by homage and scutage; plea, that he holds of defendant by fealty and rent of four shillings, of which rent nothing is in arrear for the four first years in the avowry, and that at the time of the taking offered four shillings for rent of the fifth year, which defendant refused, and took the cattle, and traverses that defendant was seised of the rent of eleven shillings, unless once by distress; replication, that the rent of eleven shillings was in arrear for four years, and that he was seised of rent of eleven shillings without distress, *Ra. Ent. 575. Vet. Int. 94.*

Bar, that he holds by fealty, rent of two shillings and other *services* alledged of, which nothing except nine shillings of rent of eleven shillings was in arrear, and as to said nine shillings defendant otherwise distrained plaintiff's beasts, and detained them until he paid, and so defendant was seised by distress, and traverses that he holds by the entire *services* in the Count, *Ra. Ent. 577.*

Avowry by king's bailiff for suit of court unperformed by an abbot for ten years, *Ra. Ent. 573. Vet. Int. 48.*

That W. held lands of defendant by fealty, rent, and suit of court, and defendant was seised of fealty and rent, W. enfeoffed plaintiff of lands, and defendant avows for suit in court. *P. 4. E. 3. 26.*

Avowry by tenant in *dower* of one seised of manor within the hundred, assigned to defendant for dower, where plaintiff, by reason of the manor, ought to do suit at the hundred, and because suit of court was undone for three years avows for half a year, *M. 5. E. 3. 3.*

That plaintiff holds lands of defendant by certain services, and avows for suit of court undone, *Upp. 91. Her. 628.*

That plaintiff's father was seised of one parcel of land called B. and another called C. and held of B. by fealty and rent, and C. by fealty, rent, and suit of court, and lord of the manor, customary heriot for another of them, and avows for two cows and a calf produced within the time; plea, that the father did not die seised, *Co. Ent. 613.*

That plaintiff's father held land of defendant by fealty, suit of court, and heriot, and avows for *heriot*; plea, that J. seised of the messuage and lands whereof, &c. held of defendant by said services, enfeoffed defendant and plaintiff's father of another part, which descended to plaintiff: demurrer, 8. *Co. 103.* As to one ox *non cepit*, as to the other that he took it for an *heriot*; plea, *hors de son fee*, *Upp. 110.*

PREScription—CUSTOMS.

That T. seised of the manor, had free foldage throughout the *vill*, and if any person erected a fold defendant pulled it down, and took the hurdles damage feasant, *per quod*, &c.; bar, that plaintiff, seised of another manor in the same *vill*, had foldage without interruption, and traverses the prescription, *Upp. 106.*

That defendant by the custom of the manor was elected surveyor of the fields, and took the cattle damage feasant in ten acres of land, contrary to an ordinance made in the court; bar, that R. being seised, demised to plaintiff, and traverses the ordinance, 1. *Br. 160.*

That mayor, &c. of H. had toll of skins sold in market, and defendant being mayor took the skins for *toll* withheld; bar, that plaintiff was a burgess of B. and so quit of toll in H. and elsewhere throughout the county by *prescription*; replication, maintaining avowry, traverses prescription, *Upp. 107.*

That the dean, &c. seised of a manor, had a market in the *vill*, and toll of cattle sold, and distrained for *toll* unpaid; manor demised to G. who assigned to defendant, who avows for *toll* of a cow sold; replication, *de injuria*, and traverses prescription of toll, *Her. 670.*

By an abbot, for goods waived, *Her. 676.*

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- Avowry by parson for *rent* issuing out of messuage, by prescription and distress for it; plea, *de injuria propria*, and traverses that the parson was seised of the rent by prescription, *Ra. Ent.* 557. Similar avowry; plea, *de injuria*, &c. and traverses that parson distrained for rent, prescription, *Ibid.* 558. Similar avowry by prior for *rent* issuing out of twenty acres of land by prescription; plea, that plaintiff held the said twenty acres of land of prior by fealty; rent at four shillings, and suit of court, and traverse that prior was seised of rent, six shillings and eightpence as of rent charge by prescription, *Ra. Ent.* 557. *Upp.* 79. 115. 143.
- That J. seised of rent by prescription, issuing out of the shop or stall in the city, devised it to W. who granted in fee to the chapter of Canterbury, who avow for rent unpaid, *Ra. Ent.* 558.
- That defendant was seised of *rent* by prescription issuing out of *locus in quo*, and the usage was to distrain for it; plea in bar, that plaintiff was seised of lands charged with the rent, and traverses the seisin of the rent by prescription and distress for it, 1. *Br.* 20.
- That B. seised of the manor of L. and J. seised of the manor of S. every seventh year had twenty pounds from the tenants of the manors for talliage called Horne Geld, *Asb.* 392.

PRESCRIPTIONS—CUSTOMS—TOLLS.

- That defendant, seised of the manor, had *estray* by prescription, and took the mare as *estray*, which he offered to deliver plaintiff on being demanded, if plaintiff would content defendant for depasturing her; plaintiff refused, and defendant avows; bar, *de injuria*, &c. and traverses that defendant was seised of the manor; judgment by *nil dicit*, *Br. R.* 414.
- That bishop, being seised of the manor, had *toll* throughout the year of all merchandizes whatsoever to be carried through the manor to certain parts of the kingdom, and distrained for toll unpaid; plea, *de injuria*, and traverses the prescription, *Mo. Ent.* 322.
- Avowry as bailiff of infant heirs admitted by guardian to the court of the manor of defendant; plea, that the father by will committed the custody of the infants to another; replication, confesses, &c. but says, that according to the *custom*, &c. it belongs to him to assign a guardian to such infants, &c.; demurrer, 2. *Lut.* 1181.
- Avowry by lessees for years, damage feasant; plea in bar, that prebendary, being seised, &c. had a *bull* to go freely into any lands within the parish without impounding, prebendary demised to plaintiff for three lives; replication, maintaining the avowry, and traverses prescription, 3. *Br.* 352.

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- Cognizance on statute Car. 2. for regulating militia, *Clif.* 366.
- Avowry on statute 4. Hen. 7. for agriculture, *Pl. Gen.* 598.
- Avowry for moiety of profits of the land on statute for maintenance of houses in husbandry, *Ra. Ent.* 576. For levying an assessment made on plaintiff by commissioners of sewers; replication, *de injuria*, &c. *Her.* 642. Avowry for taking cattle by virtue of commissioners of sewers as bailiff of earl L. *Bro. R.* 417.; replication, *de injuria*, &c. and issue.
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peace till the plaintiff paid twenty shillings in redemption; bar, that E. A. was possessed of the goods, and made his will, and continued possessed till defendants took them *de injuria*, &c. *Lev. Ent.* 152.

That defendant holds lands within the level by decree of commissioners of sewers for forty years; demurrer, *Co. Ent.* 293.

Avowry, according to statute 32. Hen. 8. for rent by executors, *Clif.* 646.

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Declaration in replevin, for taking plaintiff's goods; defendant pleads property as to part, and *non cepit* as to the remainder,

Ibid. 277

Declaration in the common pleas, in replevin, for a mare taken in the king's highway; cognizance as bailiff of lord L. the *locus in quo* the freehold, the mare there damage feasant; and traverses the taking in the king's highway; plea to the cognizance, that he did take in the king's highway; general demurrer to the plea; joinder; continuance by *cur. ad. vult.*; judgment for the plaintiff in replevin; award of injury, and return, and final judgment

for damages and costs ; assignment of errors in B. R. 1st, general errors ; 2d, no original ; 3d, no warrant of attorney ; several *certioraries* ; prayed rule to return them chief justice and custos *brevium* of common pleas *non misit breve* ; in *nullo est erratum* pleaded, and judgment affirmed, and for costs in error, S. P. 445. *Lill Ent.* 351. 2. R. Pr. C. P. 368 to 375

Declaration in replevin for taking plaintiff's cattle ; 1st cognizance as bailiff to J. W. S. acknowledges the taking the cattle in the place in which, &c. because he says that the place is a waste or common of forty acres in the parish of W. and in the manor of W. and that within the manor, from time whereof, &c. there hath been another common called W. D. of which manor the said J. W. S. at the said time when, &c. was seised in fee, and prescribes in a *questate* for a court leet, and that there has been a custom for a court leet to make bye laws for the preservation of the common within the manor, and to impose penalties upon the farmers and tenants of the manor for breach thereof ; and the said J. W. S. and all those, &c. from time whereof, &c. have demanded, received, and taken from the persons offending against such bye law the penalties incurred for breach thereof, and on non-payment to distrain the cattle of such farmer or tenant in any place within the manor ; and that at a leet held after Michaelmas 1764 a bye law was made, which is set forth with a penalty for breach thereof, and for acting contrary to that bye law and all former bye laws ; and that the plaintiff was guilty of a breach of the bye law ; whereby a penalty of thirty-five pounds was forfeited to the said J. W. S. and the same not being paid upon request, but being in arrear the defendant as bailiff to J. W. S. distrained the cattle in the place in which, &c. being within the manor, and justly, &c. ; 2d, cognizance is like the first, except in laying the custom to make bye laws a little different from the first ; 3d cognizance is different from both the others in laying the custom to make bye laws ; the plaintiff demurs to all the cognizances generally ; the defendant joins in demurrer, 2. *Will. Rep.* 155 to 163

Declaration in replevin for seizing a cow in a place called the lane ; cognizance for a distress for a fine at a court leet in the manor of S. belonging to R. F. upon a custom to chuse a constable, states that the plaintiff was chosen constable and refused to take upon him the office ; general demurrer and joinder, - - - - -

Lill. Ent. 369

Declaration for taking goods and chattels in a dwelling-house ; avowry, for rent in arrear, - - - - -

Mor. Pref. 590 to 591

Pleas in bar, 1st, that defendant of his own wrong took the goods and chattels ; 2d, that plaintiff was tenant of the house to defendant, - - - - -

Ibid. 592

Declaration in replevin in B. R. for taking household goods ; avowry, that tenant in fee of *locus in quo*, being a lot of land demised to defendant for a term of fifty-one years, whereupon he entered and built a house, where, &c. and demised the same to plaintiff for a year, at a rent payable

quarterly,

quarterly, and that he distrained for three years rent in arrear; replication, no rent in arrear, and issue,

Lill. Ent. 356

Declaration for cattle taken in several counties, *Her.* 629.

For cattle taken, *Ra. Ent.* 554. 560. *Co. Ent.* 570. 573. 596. 599. 601. 603. 609. *Wilk.* 281. 1. *Co.* 54. 67. 2. *Co.* 27. *Plo.* 269. *P.* 10. *E.* 3. 45. *Vet. Int.* 47. 200. 211. 1. *Br.* 20. 22. 3. *Br.* 339. *Ajb.* 298. 1. *Bro.* 304. *Tbo.* 264. 266. *Ro. Ent.* 141. 405. *Wi. Ent.* 812. 816. 826. 836. 840. 868. 879. 920. 2. *San.* 194. 283. *Bro. R.* 415. 421. 2. *Ven.* 131. 145. 224. 2. *Lut.* 1131. 3. *Lew.* 120. 141. 2. *Inst. Cl.* 423. *Lew. Ent.* 154.; and goods, *Ra. Ent.* 128. 557. 568. *Upper B. P.* 114. *Her.* 666.

For a gelding taken, *Wi. Ent.* 859. 860. 3. *Br.* 267. *Her.* 652. 661. For steers or bullocks, *H.* 4. *E.* 3. 25. For one ox, *Wi. Ent.* 939. For two, 2. *Lut.* 1131. For a horse, *Wi. Ent.* 870. For one sheep, *Id.* 937. 2. *Lut.* 1237.; sheep and lambs, *Id.* 1139. 1231. For a mare, *Wi. Ent.* 849. 886. 911. *Bro. R.* 414. *Co. Ent.* 591. 600. Of heifers, 2. *Lut.* 1157. 1238. Of cows, *Wi. Ent.* 817. 826. 872. 918. 2. *Lut.* 1151. 1190. 3. *Lew.* 141. Of beasts taken in two places, 2. *Inst.* 533. 3. *Br.* 316. 325. *Her.* 679. *Co. Ent.* 585. *Wi. Ent.* 835.

For beasts taken in the county of S. and chased into the county of K. and there impounded and replevied, *Her.* 629. 680.

For beasts taken and impounded at B. in the county of E. parcel of the honour extending into the counties of E. and H. and the court held in the county of H. from whence the plaint was removed by *accedas ad curiam*, *Her.* 629. *Br. R.* 419. *certiorari*.

For beasts taken one day and replevied the next, *Her.* 645.

For cattle taken in plaintiff's custody, 11. *H.* 4. 17. 24.

Declaration against a person for cattle taken by him, together with another, *Co. Ent.* 600. *M.* 5. *E.* 3. 1. 2. *Inst.* 533. For cattle, goods, and chattels, *Clift.* 640.

By an abbot, for cattle taken in the time of his predecessor, 9. *H.* 6. 25.

Declaration on a *second deliverance* of cattle taken, *Ra. Ent.* 572. *Co. Ent.* 589. 595. 4. *Co.* 6. 8. *Co.* 102. *Plo.* 845. *P.* 4. *E.* 26. *P.* 10. *E.* 3. 41. 3. *Br.* 267. 279. *Her.* 590. *Ajb.* 389. 401. *Wi. Ent.* 823. 875. 895. 926. 954. 3. *Lew.* 105. *Pl. Gen.* 558. 2. *Inst. Cl.* 423. Of beasts as yet detained, *Ra. Ent.* 572. 559. *Co. Ent.* 610. *Vet. Int.* 48. in two places, *Ra. Ent.* 567. 572. *Upper B. P.* 112.

Declaration in replevin on a plaint removed by *certiorari* and *mittimus*, 3. *Br.* 355.

For cattle taken in one *will* and impounded in another, and still detained, *Upper B. P.* 114.

For cattle taken, and part thereof detained, *Ra. Ent.* 554. 558. *Mo. Intr.* 303. *Co. Ent.* 611. 613. Of goods, 1. *Br.* 159. For cattle taken and detained until, &c. and of other cattle and goods taken and detained, *Ra. Ent.* 567. 2. *Br.* 206. *Upper B. P.* 86.

Declaration on *pluries* replevin of cattle taken in divers places, *Ra. Ent.* 560. *Upper B. P.* 113. In one place, 3. *Br.* 311.

For cattle taken; the price of them mentioned in the declaration, 2. *San.* 320. Of goods and chattels, 2. *Lut. Ent.* 1147.

Declaration wherefore detains twenty sheep until, &c. and four sheep, residue thereof, he as yet detains, *Pl. Gen.* 601.

For five mares and one filly, 3. *Lew.* 105.

For goods and chattels taken, *Wi. Ent.* 837. 2. *Lut.* 1147. 1165. *Lew. Ent.* 152. For chattels, *Vet. Int.* 240. 3. *Br.* 306. By administrator, for chattels taken in time of intestate, *Ra. Ent.* 560.

For

For one load of hay, *Wi. Ent.* 850. A cart, 2. *Lut.* 1174. For six casks of allum, 1. *San.* 187. Two pigs, 2. *Lut.* 1144.

Declaration in replevin, where defendants in person appear on *superfedeas*, and pay into the hands of the prothonotary to satisfy plaintiff, *Wi. Ent.* 906.

On a plaint removed in the county of B. out of the court of the honour of W. by *certiorari*, *Br. R.* 419.

Declaration in replevin for yet detaining, and praying delivery together of two calves which the cows brought forth in the mean time, *Mo. Int.* 216.

Plea, (after confession of the declaration) a release of plaintiff to defendants W. and W.; replication by way of estoppel, that defendants had twice imparled; and demurrer, 2. *Lut.* 1174.

Declaration for cattle still detained; defendant avows taking part of the cattle; plaintiff thereupon prays that defendant may gage deliverance of cattle, which he agrees to do, and writ awarded to sheriff to make deliverance, *Ra. Ent.* 554. *Vet. Int.* 47. *Upp.* 113.

Similar declaration for part of cattle, whereof plaintiff prays that defendant may gage deliverance; avowry, and to delivery says, that he made delivery in the county, and writ awarded to the sheriff to make delivery *si non*, &c. *Ra. Ent.* 558. *Upp.* 88. Similar declaration; defendant avows, plaintiff prays that defendant may gage deliverance, who finds pledges thereon, and judgment of delivery, *Ra. Ent.* 559. 576.

Similar declaration for ten oxen detained; plaintiff prays that defendant may gage deliverance; as to nine of the cattle gages deliverance, to the other says he died in *pound overt* through plaintiff's default; writ awarded to sheriff of delivery of the cattle, *Ra. Ent.* 565. *Vet. Int.* 47.

Similar declaration; avowry, plaintiff prays delivery; defendant says that part of the cattle died of hunger in the pound, which plaintiff does not deny, and gages deliverance of the residue, *Ra. Ent.* 568.

Gage deliverance on pledges found on the prayer of plaintiff, asserting that defendant detained the cattle, and writ awarded to the sheriff, *Ra. Ent.* 565. *Vet. Int.* 47.

Defendant, after issue joined of cattle still detained, says, that he ought not to gage deliverance, because he says that he put the cattle in *pound overt*, where they died of hunger; replication, that defendant converted them to his own use; and traverses that they died of hunger, *Ra. Ent.* 567. *Upp.* 113.

Return by sheriff, that he took the cattle of defendant to the value, on a *pluries* replevin after a return of cattle eloigned on which he and the other defendants are fined for contempt; declaration against them, and gage deliverance on each side; defendant did not deliver the cattle accordingly, and thereon *scire facias* awarded on the recognizance; sureties appear and severally plead that defendant delivered the cattle, and issue; verdict, that he did not deliver the cattle, and judgment thereon, *Co. Ent.* 611.

Declaration for cattle as yet detained; cognizance as bailiff for an annual rent unpaid, and as to delivery of the cattle says, that he impounded them, and afterwards the cattle came to plaintiff's possession, *Br. R.* 415.

As to part of the cattle defendant claims property, as to the residue defendant avows, plaintiff thereupon prays that defendant may gage deliverance of the cattle, upon which defendant says that part of the cattle perished with hunger in the open pound through plaintiff's fault, which plaintiff does not deny, and of the residue defendant gages deliverance, *Mo. Int.* 316.

Pluries replevin, cattle eloigned returned by the bailiff, and cattle taken on a *capias satisfaciendum in withernam*; declaration thereupon, plaintiff prays defendant may gage deliverance of the cattle before taken; plea, and after issue joined defendant prays that plaintiff may gage deliverance of the cattle taken in

- withernam*, who finds pledges thereon, and *rule* that defendant may have them thereon at the day of subpoena, &c. *Mo. Intr.* 324.
- Non cepit* chattels; avows taking cattle, *Ra. Ent.* 565. *Non cepit* two steers, and avows taking, *H. 4. E. 3.* 25. Plea by one *non cepit*, the other avows, *Ra. Ent.* 561. 565, *Upp. B. P.* 111.
- Plea, that defendant is seised of a close in the same *vill* in which he took cattle damage feasant, and traverses the taking mentioned in the declaration; replication, issue on the plea, *Ra. Ent.* 554. *Wilk.* 282. *Vet. Int.* 48. Traverse of *locus*, and makes cognizance taking cattle damage feasant, *Vet. Int.* 244. *A/b.* 407. *Non cepit* to part, 2. *Br.* 88. Traverse *locus*, and avows that he is seised of the manor whereof, &c. he took cattle damage feasant; replication, that *locus* is called as well by one name as the other, *Ra. Ent.* 556. *Vet. Int.* 211.
- Plea, *cepit*, in *alio loco*, in the same *vill*, and for return avows in *locus* of parcel of the manor whereof he is seised, damage feasant; issue on the *locum* of taking, *Her.* 590.
- Plea, *cepit*, part of the cattle damage feasant in his close, and traverses *locus* in declaration, and to residue feoffment to uses and descent to F. issue on the traverse; and demurrer to the other plea, *Ra. Ent.* 554.
- Plea in abatement of declaration since second deliverance, for that *locus in quo* is in another county; judgment, *Ibid.* 274.
- Plea in *estoppel*, (to declaration on second deliverance, for cattle taken in two *locis* at B.) for that plaintiff first counted against defendant of taking in one place, 3. *Br.* 317.
- Plea in bar, protesting *property* in another, for plea *cepit in alio loco*, *Ra. Ent.* 556. That property of cattle was in defendant, and not plaintiff, and issue, *Her.* 677. Of chattels, *Ra. Ent.* 557. *Vet. Int.* 53. 93. *Her.* 677. As to part, *property* in defendant, and not plaintiff; as to residue, *non cepit*, *Upper B. P.* 128. 3. *Br.* 456. *Non cepit* to part, to residue, that *property* in the horse was in L. and property in the dish in W. and not plaintiff, *Ra. Ent.* 557. *Upper B. P.* 97. That *property* of the cow was in E. and not plaintiff; and property of two heifers was in J. and not plaintiff, and avows for a return. *Ra. Ent.* 568. That property of one ram was in defendant, and avows for two rams damage feasant, *Her.* 4.; as to part, that property was in J. and defendant *cepit* as his servant, for residue avows; replication, that property was in plaintiff, and not in J. *Ra. Ent.* 567. *Upper B. P.* 98.
- Avowry as lord of moiety of the *vill*, and that cattle belonged to R. and not to plaintiff, and defendant took them damage feasant; plea in bar, that *locus in quo*, &c. is soil of plaintiff in severalty, and that cattle depastured by him for profit, and so the cattle belonged to him; replication, that *locus in quo* is waste and held in common, *T. 3. E. 3.* 37.
- Plea in abatement after hearing plaint returned by sheriff, *Upper B. P.* 96.
- Plea, that plaintiff delivered to him chattels for safe custody, in which case plaintiff ought to prosecute *detinue*, and not *replevin*; replication, *de injuria*, &c. and traverses delivery, *Ra. Ent.* 569.
- Plea in abatement (by chaplain of Canterbury, after demanding to hear the plaint certified into court by *recordari*). for that the chaplain is not a name of *dignity*, and judgment for defendant, *Ra. Ent.* 570.
- Plea, that *locus* of taking is in another county, in abatement, *Jud.* 274.
- Plea (to Count on second deliverance of cattle taken in two places in B.), *estoppel*, for that plaintiff first counted of taking in one place in E. 3. *Br.* 317. Plea in abatement by one; the other avows, *Ra. Ent.* 569.
- Plea, *non cepit* to replevin against R. and M. his wife, and W. by R.; plea by M. that she is the wife of E.; cognizance by W. as bailiff of E. and M. his wife; replication, that M. is not the wife of E. *Her.* 658. Cognizance as bailiff, for damage feasant; plea, *non ballivus*, *Her.* 604.

Plea,

Plea, that *property* in one horse was in R. only. and traverses the property in R. and B. Similar plea, and traverse of the other horse, *Mo. Ent.* 300.

Avowry by virtue of an attachment out of county court against one N. D.; plea in bar, that plaintiff was possessed, and traverses that N. D. was possessed, and issue, 2. *Lut.* 1196. That *property* of the ox was in one A. and not in plaintiff, and issue, 1. *Bro.* 310. *Property in part, residue non cepit, Pl. Gen.* 602.

Replevin, that defendant being possessed of cattle as of his own, &c. delivered them to D. for safe custody, who gave them to plaintiff, who took and yet detains; plea in bar, that defendant being possessed sold them to plaintiff, who was possessed until he wrongfully took, &c. and delivered them to D. and plaintiff took them from him, and was again possessed; replication, maintains avowry, and traverses *selling, Mo. Int.* 304.

Writ of enquiry on writ *de propriitate probenda*, for that one outlawed was possessed of the goods, 7. *H.* 4. 45.

Entry of deliverance gaged, where the defendant took four oxen, and one of them died in pound overt, *Thef. Br.* 130.

Entry of gage deliverance in the hustings, *Ibid.* 276.

Retorno habendo on default, by plaintiff in replevin; sheriff's return; cattle eloigned; *capias in withernam*; and sheriff returns *nil habuit averia*; on which plaintiff makes a *fine* for contempt, and finds pledges to prosecute as well the claim as a return of the cattle; declaration thereon and imparlance, *Bro. R.* 418.

Process until gage deliverance of cattle eloigned, and then imparlance to the declaration and avowry, *Co. Ent.* 612.

P'aries replevin; return of cattle eloigned; cattle taken on a *capias* to the value; declaration; imparlance, plaintiff prays deliverance of the cattle first taken, and defendants gages delivery of the cattle taken *in withernam*; further imparlance and avowry, 3. *Br.* 310.

RESCUE, or RESCOUS (*See TORT, post.*)

SCIRE FACIAS (*See Post.*)

STATUTES, ACTIONS ON (*See ASSUMPSIT, DEBT, TORT.*)

SUGGESTIONS ON PARTICULAR
STATUTES. } *See PRACTICAL*

OF DEATHS. } *FORMS.*

ON PROHIBITIONS (*See Vol. VI.*)

TORT, to PERSONS.

By DEFAMATION.

In Common Pleas, Easter Term, 23. Geo. III.

LONDON, to wit. John Ireland, late of L. warehouseman, was attached to answer unto Michael Bottomley in a plea of trespass on the case; and thereupon the said plaintiff, by John Loyd his attorney, complains, that whereas the said plaintiff now is a good, true, honest, just, and faithful subject of this realm, and as such from the time of his nativity hitherto hath always behaved and governed himself, and hath always, until the speaking, &c. of the several false, scandalous, and defamatory words hereinafter mentioned to have been spoken and published by the said defendant of and concerning the said plaintiff, been said, held, esteemed, and reputed to be a person of good name, fame, credit, and reputation amongst all his neighbours and other good and worthy subjects of this realm, and hath never been guilty, nor until the speaking, &c. of the several false, &c. words hereafter mentioned been suspected to have been guilty of any kind of forgery, robbery, fraud, or dishonesty, or of any other such hurtful crime or offence: And whereas before the speaking, &c. of the several false, &c. words hereafter mentioned to have been spoken and published by the said defendant of and concerning the said plaintiff, he the said plaintiff lived with and was in the service of one Rowley in the character or capacity of a clerk, and during such his servitude behaved himself with the greatest integrity and honesty towards his said master, and without being guilty of any embezzlement, purloining or taking away money or other things entrusted to his care, whereby and by means of which said several premises he the said plaintiff, before the speaking, &c. of the several false, &c. words hereinafter mentioned, had deservedly obtained and acquired the benevolence, good opinion, and credit not only of his aforesaid master, but of all other persons any ways acquainted with him, or to whom he was known, to wit, at L. aforesaid; yet the said defendant, well knowing the premises aforesaid, but contriving and maliciously intending wrongfully and unjustly to hurt, prejudice, and damnify the said plaintiff in his aforesaid good name, &c. and to bring him into public hatred, scandal, and ignominy, and to subject him to the pains and penalties by the laws and statutes of this realm made and provided against persons guilty of forgery, robbery, embezzlement, fraud, or dishonesty, on the twenty-eighth of February 1783, to wit, at L. &c. aforesaid, in a certain discourse which the said defendant then and there had with one Brown, a good and worthy subject of this realm, of and concerning the said plaintiff, and of and concerning him the said plaintiff and his conduct and behaviour whilst in the service of the said Rowley as aforesaid, he the said defendant then and there falsely and maliciously said, spake, and published these false, scandalous, and defamatory words following of and concerning the said plaintiff, and

Declaration for words of forgery, robbery, and embezzlement of money from one with whom plaintiff was clerk, with special damage laid.

Colloquium:

2d Count, em-
bezzling, and
other words.

of and concerning him and his conduct and behaviour whilst in the service of the said Rowley as aforesaid, that is to say, "He (meaning the said plaintiff) robbed Rowley (meaning the said Rowley, with whom the said plaintiff lived in the capacity of clerk as aforesaid) of twenty or thirty pounds at a time; he (again meaning the said plaintiff) is run away for a forgery of four or five thousand pounds, (thereby meaning that the said plaintiff had been and was guilty of forgery, and that he had absconded to avoid being apprehended for such offence) and all the sea-ports are stopped against him (again meaning the said plaintiff), and he (again meaning the said plaintiff) will be hanged if he (again meaning the said plaintiff) ever comes back:" And afterwards, to wit, on the day and year aforesaid, at L. &c. aforesaid, in a certain other discourse which the said defendant then and there had with divers good and worthy subjects of this kingdom of and concerning the said plaintiff, and of and concerning his conduct and behaviour whilst in the service of the said Rowley as aforesaid, he the said defendant then and there falsely and maliciously said, rehearsed, proclaimed, and loudly published the other false, &c. words following of and concerning the said plaintiff and his conduct and behaviour whilst in the service of the said Rowley, in the presence and hearing of those last-mentioned subject, that is to say, "he (meaning the said plaintiff) has been the ruin of Mr. Rowley (meaning the aforesaid Rowley, and also meaning and insinuating by such last-mentioned words that the said plaintiff had acted dishonestly by the said Rowley whilst he was in his service as aforesaid;) he (again meaning the said plaintiff) spent five hundred pounds (meaning five hundred pounds) a-year, and kept a whore at Islington at five guineas per week; (thereby meaning and insinuating, and intending to have it understood by the persons to whom such words were spoken that the said plaintiff, whilst in the service of the said Rowley as aforesaid, embezzled considerable sums of money, the property of his said master, and by that means became enabled to live at the rate and in the manner insinuated by the said defendant as aforesaid); and he (again meaning the said plaintiff) robbed him (meaning said Rowley) of thirty-six guineas out of his desk to spend at gaming:"

3d Count.

Like colloquium with the second. Words: "He (meaning the said plaintiff) robbed him (meaning the said Rowley) of twenty or thirty pounds at a time (thereby meaning and insinuating that the said plaintiff embezzled money of the said Rowley as aforesaid):" [Colloquium of and concerning the said plaintiff.] Words: "He (meaning the said plaintiff) is run away for a forgery of four or five thousand pounds, and will be hanged if ever he (again meaning the said plaintiff) comes back (meaning and insinuating by such last-mentioned words that the said plaintiff had been and was guilty of a forgery, for which he was liable to capital punishment):"

4th Count.

5th Count.

[Like colloquium with the fourth.] Words: "He (meaning the said plaintiff) is run away for forgery (thereby meaning that the said plaintiff had been and was guilty of forgery):" Colloquium like

like that in the second and third counts.] Words: He (meaning the said plaintiff) robbed him (meaning the said Rowley) of thirty-six guineas out of his (meaning the said Rowley's) desk:" By reason and means of the speaking and publishing of which said several false, &c. words hereinbefore mentioned of and concerning the said plaintiff, he the said plaintiff is very much hurt, injured, and damnified in his aforesaid good name, &c. and is fallen into public scandal, ignominy, and disgrace amongst all neighbours and other good and worthy subjects of this realm, in-
 somuch that divers of those neighbours and subjects, to whom the innocence and integrity of the said plaintiff in the premises were unknown, have always, from the time, &c. of the several false, &c. words hitherto so vehemently suspected the said plaintiff to have been and to be guilty of forgery and robbery, and to have embezzled and purloined any money whilst he was in the service of the said Rowley as aforesaid, that they have on that account always from the time of speaking such words hitherto wholly refused, and still do daily moreover refuse to have any commerce, acquaintance, or discourse with him, or to to have any thing to do with him as before they were accustomed to do, and would have again had not these words been spoken and said: Plaintiff in fact further saith, that by reason and means of the speaking, &c. of the said several false, &c. words hereinbefore mentioned of and concerning the said plaintiff one J. W. who was able to procure him the said plaintiff a beneficial place or employment in the character or capacity of a clerk, declined and omitted to procure him such place, office, or employment, or to yield or afford him any assistance on that occasion: And one T. T. with whom the said plaintiff was used to deal in the course and way of trade, and from whom he was used to buy and purchase goods on credit, and of and from whom he the said plaintiff had bought, bespoke, and ordered a certain large quantity of goods and merchandize in the way of trade, declined, refused, and desisted from having any further dealings with him, and withheld and kept back the said goods and merchandizes so by him ordered as aforesaid, and declined and refused executing such order, or complying with the same, and refused to give him further credit, whereby he the said plaintiff lost and was deprived of all benefit and advantage that would have arisen to him from his being engaged and employed in such character, office, capacity, or employment as aforesaid, and all profit, benefit, emolument, and advantage that would have arisen and accrued to him from the execution of or compliance with the said order so by him given to the said T. T. as aforesaid; and from the further dealings, friendship, and assistance of and with him the said T. T.: And the said plaintiff also saith, that on occasion of the speaking, &c. of the said several false, &c. words hereinbefore mentioned, many other persons with whom he was used to deal on credit have refused to give him any further credit: And he also was, hath been, and is on occasion of the several premises aforesaid otherwise

greatly injured and damnified, to wit, at L. &c. aforesaid; wherefore the said plaintiff saith he is injured, and hath sustained damages to the amount of one thousand pounds; and therefore he brings his suit, &c.

V. LAWES.

Declaration
in B. R. for
words of bank-
ruptcy spoken of
a trader.

LONDON, to wit. Christopher Hughes complains of William Took the younger, &c. for that whereas the said C. long before, and at the time of the speaking and the publishing of the several false, scandalous, and defamatory words hereinafter mentioned had been, and was a cheesemonger, and sought his livelihood by buying and selling, as others of that trade and business usually do, and as such trader had always conducted himself with great fairness and punctuality towards his creditors, and till the time of the speaking and publishing of the said several words had never been suspected of bankruptcy, insolvency, or any fraudulent intention, but on the contrary during all the time aforesaid had been, and at the time of the speaking and publishing of the said several words was in good circumstances, credit, and esteem, to wit, at the parish of Saint Mary le Bow, in the ward of Cheap, in L. aforesaid; yet the said William, well knowing the premises, but contriving and maliciously intending wrongfully and unjustly to hurt and prejudice the said C. in his said trade and business, and to injure his credit, and to cause it to be believed that the said C. was insolvent and likely to become a bankrupt, and that he intended to defraud his creditors of their just demands, heretofore, to wit, on the day of A. D. 1789, at L. aforesaid, in the parish and ward aforesaid, in a certain discourse which the said William then and there had with divers good and worthy subjects of this realm, he the said William falsely and maliciously said, spoke, and published, in the presence and hearing of those subjects, of and concerning the said C. as such trader as aforesaid, and of and concerning the state of his circumstances, these false, scandalous, and defamatory words following, *i. e.* “His (meaning the said C.’s) circumstances are very bad; he (again meaning the said C.) has but about twenty-six pounds *per annum*, which he (again meaning the said C.) is going to make over to his (again meaning the said C.’s) wife, and then to be made a bankrupt” (meaning by the said words not only that the said C. was on the verge of becoming bankrupt, but also that he was about to make a fraudulent conveyance of his property, with a view of protecting it from his creditors): And afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, in a certain other discourse which the said William then and there had with divers other good and worthy subjects of this realm, he the said William falsely and maliciously said, spoke, and published, in the presence and hearing of those last-mentioned subjects, of and concerning the said C. as such trader as aforesaid, *and of and concerning the state of his circumstances* [these words in italic omitted in the last count of the declaration], these other false, scandalous, and defamatory

3d Count.

defamatory words following, *i. e.* Mr. Hughes's (meaning the said C.'s) circumstances are very bad; he (meaning the said C.) is going to be made a bankrupt:" "He (meaning the said C.) is going to make over his (meaning the said C.'s) property, and then to be made a bankrupt" (meaning by the said last-mentioned words not only that the said C. was on a verge of a bankruptcy, but also that he was about to attempt a fraudulent disposition of his property to the prejudice of his creditors :) His (meaning the said C.'s) circumstances are very bad" (meaning by the said last-mentioned words that the said C. was insolvent, and incapable of paying his debts): "He (meaning the said C.) is going to be a bankrupt; by means of the speaking and publishing of which said several false, scandalous, and defamatory words, the said C. hath been greatly hurt and injured in his said trade and business, and his credit materially injured, insomuch that divers persons, to whom the situation and circumstances of the said C. were known, have from thence hitherto believed him to be insolvent and likely to become a bankrupt, and have also suspected him of intending to defraud his creditors of their just demands; and the said C. is by the means aforesaid otherwise greatly injured and damnified, to wit, at L. aforesaid, in the parish and ward aforesaid, to the damage of the said C. of pounds; and therefore he brings suit, &c. Pledges, &c.

S. MARRYAT.

Hilary Term, 27 Geo. III.

ROLL, 1514.

SAMUEL BUTLER } LONDON, to wit, &c. For that the said Case for words
against } Samuel now is a good, honest, just, and of felony spoken
JOHN JONES. } faithful subject of this kingdom, and as such of a servant by
hath always, from the time of his nativity, hitherto behaved and his master.
governed himself, and hath always, until the speaking and publishing of the several false, scandalous, and defamatory words hereinafter mentioned to have been spoken and published by the said John of and concerning the said S. been held and reputed to be a person of good name, fame, and credit amongst all his neighbours and other good and worthy subjects of this kingdom, and hath never been guilty, nor until the speaking and publishing of the said several words been suspected to have been guilty of any robbery, theft, or fraud, or of any other such hurtful crime: And whereas the said Samuel for divers, to wit, eight years before the speaking and publishing of the said several words had lived with and been in the service of the said John, and during such his service had behaved and conducted himself with the greatest fidelity and honesty towards the said John, without embezzling or purloining any money or other things entrusted to his care, and without ever defrauding the said John of any money or other thing; by means of which said several premises he the said Samuel had deservedly obtained the benevolence, good opinion, and credit of all his neighbours and other good and worthy subjects of this kingdom,

Colloquium.

2d Count, spoken in another way.

kingdom to whom he was known, to wit, at L. aforesaid, in the parish of All Hallows, Lombard Street, in the ward of : And whereas a little before the speaking and publishing of the said several words the said S. had quitted and left the service of the said John, to wit, at L. aforesaid, in the parish and ward aforesaid : And whereas before the speaking and publishing of the said several words in the first and second counts of this declaration mentioned a certain guinea had been left at the shop of the said John of one Mary Chitty, for the purpose of being exchanged on account of a supposed deficiency in the weight of the said guinea, to wit, at at L. &c. aforesaid, yet the said John, well knowing the premises, but contriving and maliciously intending wrongfully and unjustly to hurt, injure, and prejudice the said S. in his aforesaid good name, fame, and credit, and to bring him into public scandal, infamy, and disgrace, and to subject him to the pains and penalties by the laws and statutes of this kingdom made and provided against persons guilty of robbery, theft, embezzlement, fraud, and dishonesty heretofore, to wit, on the twentieth of April A. D. 1783, at L. &c. aforesaid, in a certain discourse which he the said John then and there had with divers good and worthy subjects of this kingdom, of and concerning the said guinea so left by the said M. C. to be exchanged as aforesaid, and of and concerning the said S. he the said John then and there falsely and maliciously said, rehearsed, proclaimed, and loudly published these false, scandalous, and defamatory words following, of and concerning the said guinea, and of and concerning the said S. and his conduct and behaviour in the service of the said J. as aforesaid, in the presence and hearing of those last-mentioned subjects, *i. e.* Mr. Butler (meaning the said J.) has it (meaning the said guinea) I (meaning himself) know, and many other guineas of mine (meaning of his the said John's) besides (meaning by the said words, that the said Samuel had embezzled not only the said guinea, but also other monies of the said John whilst he was in the service of the said John as aforesaid) : And afterwards, to wit, on the day and year aforesaid, at L. &c. aforesaid, in a certain other discourse which he the said John then and there had with divers other good and worthy subjects of this kingdom, of and concerning the said guinea so left by the said M. C. to be exchanged as aforesaid, and of and concerning the said Samuel, he the said John then and there falsely and maliciously rehearsed, proclaimed, and loudly published these other false, scandalous and defamatory words following of and concerning the said guinea, and of and concerning the said S. in his conduct and behaviour in the service of the said J. as aforesaid, in the presence and hearing of those last-mentioned subjects, *i. e.* I (meaning himself the said John) am not surprized at it; it (meaning the said guinea) is not the only guinea by many I (again meaning himself the said John) have reason to suppose Mr. Butler (meaning the said S.) has defrauded me (meaning himself the said John) of (meaning and insinuating by the said last-mentioned words, that he the said John had reason to suppose that the said S. had defrauded the said John

not

not only of the said guinea, but also of various other sums of money whilst he was in the service of the said John as aforesaid): And ^{3d Count.} afterwards, to wit, on the twenty-first of April, in the year aforesaid, at L. &c. aforesaid, in a certain other discourse which he the said J. then and there had with divers other good and worthy subjects of this kingdom of and concerning the said Samuel, and his conduct and behaviour in the service of the said John as aforesaid, he the said John then and there falsely and maliciously rehearsed, proclaimed, and loudly published these other false, scandalous, and defamatory words following, of and concerning the said S. and his conduct and behaviour in the service of the said John as aforesaid, in the presence and hearing of these last-mentioned subjects, *i. e.* He (meaning the said S.) made himself a partner in my shop (meaning the shop of him the said John) without leave, and pocketed money that should have been put into the till (meaning and insinuating by the said last-mentioned words, that the said Samuel, whilst he was in the service of the service of the said John as aforesaid, had embezzled the property and money of the said John): [Colloquium like that in the ^{4th Count.} third Count.] Words: He (meaning the said S.) made himself a partner in my shop (meaning the shop of him the said John) without leave (meaning and insinuating by the said last-mentioned words, that the said S. had acted dishonestly, and defrauded the said J. of his money and property whilst in his service as aforesaid): [Same colloquium.] Words: He (meaning the said S.) ^{5th Count.} pocketed money that ought to have been put into the till (meaning and insinuating by the said last-mentioned words, that the said S. whilst he was in the service of the said John as aforesaid, had embezzled the money of the said John): And afterwards, to wit, ^{6th Count.} on the twenty-second of April, A. D. 1786, at L. &c. aforesaid, in a certain other discourse which he the said John then and there had with divers other good and worthy subjects of this kingdom of and concerning the said S. he the said John then and there falsely and maliciously said, spake, and loudly published these other false, scandalous, and defamatory words following, of and concerning the said Samuel, in the presence and hearing of those subjects, *i. e.* Mr. Butler (meaning the said S.) is a thief, and has robbed me (meaning him the said John) of two or three guineas: [Same ^{7th Count.} colloquium as the 6th.] Words: He (meaning the said Samuel) is a thief: [Same colloquium as the two next preceding Counts.] ^{8th Count.} Words: He (meaning the said S.) robbed me (meaning him the said John) of two or three guineas: [Same colloquium as the ^{9th Count.} third.] Words: Mr. Butler (meaning the said S.) is a thief, and has robbed me (meaning the said John) of two or three guineas (meaning by the said words, that the said Samuel had in the service of the said John acted unfaithfully, and had defrauded the said John of his money): [Same colloquium as the third.] ^{10th Count.} Words: He (meaning the said Samuel) robbed me (meaning the said John) of two or three guineas (meaning by the said words, that the said S. had, whilst in the service of the said John, defrauded

ed the said John of his money); by reason and means of the speaking and publishing of which said several false, scandalous, and defamatory words of and concerning the said Samuel, he the said S. is greatly injured and prejudiced in his aforesaid good name, fame, and credit, and brought into public scandal, infamy, and disgrace amongst all his neighbours and other good and worthy subjects of this kingdom, insomuch that divers of those neighbours and subjects to whom the innocence and integrity of the said S. in the premises were unknown, have, on occasion of the speaking and publishing the said several words, from thence hitherto suspected, and still do suspect the said S. to have been, and to be guilty of robbery, theft, embezzlement, fraud, and dishonesty, and have on that account from thence hitherto refused, and still refuse to have any commerce, acquaintance, or discourse with him, or to have any thing to do with him, as they were before used and accustomed to do, and would have done again, had not those words been so spoken and published as aforesaid; and the said S. by means of the speaking and publishing thereof, hath been and is otherwise greatly injured and damnified, to wit, at L. &c. aforesaid, to the damage of the said S. of one thousand pounds; and therefore he brings suit, &c.

S. MARRYAT.

Plea of justification, that the words are true as to some Counts.

First, Not guilty to the whole, and issue thereon; 2d, as to so much of the said words supposed to have been spoken and published by the said John in the first, second, third, fourth, fifth, ninth, and last Counts of the said declaration contained, as respectively relate to the said S. having, in the said service of the said John, acted unfaithfully and dishonestly, and defrauded the said John of, and embezzled his money and property, he the said John says, that the said S. ought not to have or maintain his aforesaid action thereof against him; because he says, that true it is that the said Samuel had lived with and been in the service of the said John, and had quitted and left the service of the said John in manner and form as in the said declaration is above supposed; but the said John further says, that before any of the said times when the said words are supposed to have been spoken and published, the said S. had in the service of the said John, to wit, on the first of January, A. D. 1786, and on divers other days and times between that day and the said nineteenth of April, in the said year of Our Lord 1786, at L. &c. aforesaid, without the leave of the said John pocketed and embezzled divers sums of money of the said John, which had come to his hands in the said service of the said John, and which ought to have been put into the till of the said John, amounting to a large sum of money, to wit, the sum of four pounds of lawful, &c. and defrauded the said John of the same, and thereby acted unfaithfully and dishonestly whilst in the said service of him the said John, to wit, at L. &c. aforesaid; wherefore the said John, at the said several times when, &c. did say, proclaim, rehearse, and publish the said several words relating thereto, and in the said first, second, third, fourth, fifth, ninth, and

and last Counts of the said declaration mentioned, of and concerning the said Samuel, as it was lawful for him to do for the cause last aforesaid; and this the said John is ready to verify, wherefore he prays judgment if the said Samuel ought to have or maintain his aforesaid action thereof against him, &c.: And the said John, for further plea in this behalf, by like leave of the court here first had and obtained for that purpose, according to the form of the statute in such case made and provided, as to so much of the said words supposed to have been spoken and published by the said John, and in the first, second, third, fourth, fifth, ninth, and last Counts of the said declaration contained, as respectively relate to the said Samuel having, in the said service of the said John, acted unfaithfully and dishonestly, and defrauded the said John of, and embezzled his money and property (*actio non*); because he says, that true it is that the said S. had lived with and been in the service of the said John, and had quitted and left the service of the said John in manner and form as in the said declaration above supposed; but the said John further says, that before any of the said times when the said words are supposed to have been spoken and published, to wit, on the nineteenth of April, A. D. 1786, at L. &c. aforesaid, the said S. *acknowledged and confessed to the said John that he had* at divers times whilst he was in the service of him the said John, secreted and embezzled monies of the said John which had come to his hands in the said service of him the said John, not exceeding in the whole the sum of four pounds four shillings of lawful money of Great Britain, and that he had thereby acted unfaithfully and dishonestly whilst in the service of him the said John, wherefore the said John, at the said several times when, &c. did say, proclaim, rehearse, and publish the said several words relating thereto, and in the said first, second, third, fourth, fifth, ninth, and last Counts of the said declaration mentioned, of and concerning the said S. as it was lawful for him to do for the cause last aforesaid; and this the said John is ready to verify; wherefore he prays judgment if the said S. ought to have or maintain his aforesaid action thereof against him, &c.: And for further plea in this behalf, the said John, by leave of the court here to him for that purpose first granted, according to the form of the statute in such case made and provided as to so much of the said words supposed to have been spoken by the said John, and in the first and second Counts of the said declaration mentioned, as relates to the said S. having embezzled the said guinea, by the said declaration supposed to have been left at the shop of the said John by the said M. C. for the purpose in that behalf therein mentioned (*actio non*); because he says, that true it is that the said Samuel had lived with and been in the service of the said John, and had quitted and left the service of the said John in manner and form as in the said declaration is above supposed; but the said John farther says, that before the said time when the words are supposed to have been spoken as aforesaid, or either of those times, to wit, on the nineteenth of April, in the year of Our Lord 1786, the said S. did

3d Plea, that
plaintiff confessed, &c.

4th Plea, words
are true as to
other Counts.

embezzle the said guinea, to wit, at L. &c. aforesaid; wherefore he the said John, at the several times when, &c. did say, rehearse, proclaim, and publish the said several words relating thereto, and in the said first and second Counts of the said declaration mentioned, of and concerning the said S. as it was lawful for him to do for the cause aforesaid; and this the said John is ready to verify, wherefore he prays judgment if the said S. ought to have or maintain his aforesaid action thereof against him, &c.

C. RUNNINGTON.

Replication.

And the said S. as to the said plea of the said John by him secondly above pleaded in bar, as to so much of the said words spoken and published by the said John, and in the first, second, third, fourth, fifth, ninth, and last Counts of the said declaration mentioned, as respectively relate to the said S. having, in the service of the said John, acted unfaithfully and dishonestly, and defrauded the said John of, and embezzled his money and property, says (*precludi non*); because he says, that the said John, at the said several times when, &c. of his own wrong, and without any such cause as the said John hath in and by the said last-mentioned plea in that behalf alleged, said, proclaimed, rehearsed, and published the said several words relating thereto, and in the said first, second, third, fourth, fifth, ninth, and last Counts of the said declaration mentioned, of and concerning the said S. in manner and form as the said S. hath in and by the said first, second, third, fourth, fifth, ninth, and last Counts of the said declaration above thereof complained against the said John; and this the said S. prays may be enquired of by the country, and the said John doth the like. [There were similar replications to the two last pleas, as to the words they respectively purported to justify, and issues thereon, with an award of *venire* on the last return of Hilary term.]

S. MARRYAT.

Continuance.

At which day, before our lord the king at Westminster, come the parties aforesaid by their attornies aforesaid, and the sheriffs do not return the said writ, nor have they done any thing thereupon; therefore let a jury thereupon come before our lord the king at Westminster on Monday next after the morrow of the Ascension in, &c. by whom, &c. and who, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there, &c.

Postea. where
plaintiff being
called, makes
default at the
trial.

Afterwards the process being continued between the parties aforesaid of the plea aforesaid, by the jury between them being respited, before our lord the king at Westminster until Friday next after the morrow of the Holy Trinity, unless the king's right trusty and well-beloved William, earl of Mansfield, his majesty's chief justice aforesaid to hold pleas before the king himself, should first come on Wednesday, the twenty-third of May, at the Guildhall of the city of London, according to the form of the statute

In such case made and provided, for default of jurors, because none of them did appear; at which day, before our lord the king at Westminster, come the parties aforesaid by their attornies, and the said chief justice, before whom the said issues were, hath sent hither his record in these words, to wit: Afterwards, that is to Postea. say, on the day and at the place within-mentioned, before the right honourable William, earl of Mansfield, the chief justice within written, John Way, gentleman, being associated unto the said chief justice by force of the statute in that case made and provided, comes the within-named Samuel, by his attorney within-contained, and the within-named John Jones, although solemnly required, comes not, but makes default; therefore let the jurors of the jury within-mentioned be take against him by his default, and the jurors of that jury being summoned, come, who to say the truth of the within-contents being chosen, tried, and sworn, upon their oath say, as to the said issue between the parties aforesaid first within-joined, that the said John Jones is guilty of the premises in the said second Count of the said declaration mentioned, in manner and form as the said James hath in and by the said second Count thereof complained against him, and that he the said John J. is not guilty of the residue of the premises in the said declaration mentioned, as the said S. hath within thereof complained against him: And as to the said issue between the parties aforesaid secondly within-joined, the said jurors, upon their said oath, further say, that the said John J. of his own wrong, and without any such cause as he hath in his second plea in that behalf alledged, spoke and published the said words in the said second Count mentioned, relating to the said S. having in the service of the said John acted unfaithfully and dishonestly, and defrauded the said John of his money, in manner and form as the said Samuel hath in and by the said second Count thereof complained against him: And as to the said issue between the parties aforesaid thirdly within-joined, the said jurors, on their said oath, further say, that the said J. J. of his own wrong, and without any such cause as he hath in his third plea in that behalf alledged, spoke and published the said words in the said second Count mentioned, relating to the said Samuel having in the said service acted unfaithfully and dishonestly, and defrauded the said John of his money, in manner and form as the said Samuel hath in and by the said second Count thereof complained against him: And the said issue between the parties aforesaid fourthly within-joined, the said jurors, upon their said oath, further say, that the said John J. of his own wrong, and without any such cause as he hath in his fourth plea in that behalf alledged, spoke and published the said words in the said second Count mentioned, relating to the said Samuel having embezzled the said guinea left at the shop of the said John for the purpose in that behalf in the said declaration mentioned, in manner and form as the said S. hath in and by the said second Count thereof complained against him; and they assess the damages, and the said Samuel, by reason of the premises in the said second Count men-

Continuances.

Judgment signed 26th of July 1788.

Mercy.

mentioned, over and above his costs and charges by him about his suit in that behalf expended to two hundred pounds, and for those costs and charges to forty pounds; and because the court here is not yet advised about giving their judgment of and concerning the premises, day is given to the said parties to be before our said lord the king at Westminster on Tuesday next after the morrow of All Souls, to hear their judgment thereof; at which day, before our said lord the king at Westminster, come the parties aforesaid by their attornies aforesaid; and because, &c. [Like continuances, *curia adv. vult.*] to Wednesday next after fifteen days of St. Hilary, from thence to Wednesday next, fifteen days from the day of Easter, and from thence to Friday after the morrow of the Holy Trinity; at which day, before our said lord the king at Westminster, come the parties aforesaid by their attornies aforesaid, whereupon the court here having seen and fully understood all and singular the premises, it is considered that the said S. recover against the said John J. the damages aforesaid by the said jury in form aforesaid assessed, and also ninety-four pounds for his costs and charges by the said court here adjudged of increase to the said Samuel with his assent; which said damages in the whole amount to two hundred and ninety-six pounds, and let the said John Jones be thereof in mercy, and let the said S. be also in mercy for his false complaint against the said John Jones as to the residue of the premises in the said declaration mentioned, whereof the said John is acquitted as aforesaid; and let the said John J. go thereof without day, &c.

Declaration in B. R. for words of dishonesty spoken of an attorney in his profession, whereby he lost his clients.

LONDON, to wit. Alexander Dickenson, gentleman, one of the attornies of the court of our lord the now king, before the king himself present here in court in his own proper person, according to the liberties and privileges of the said court, from time immemorial used and approved of therein, complains of Daniel Daniel being, &c. of the said lord the king, before the king himself; for that whereas the said A. before and at the time of speaking and publishing of the several false, scandalous, and defamatory words hereinafter mentioned, had been and was an attorney, and had always demeaned and conducted himself in his profession as such attorney with great fairness and integrity, and till the time of the speaking and publishing of the said several words, had never been suspected to have been guilty of any fraud, knavery, or mal-practice, but on the contrary thereof during all the time aforesaid had been, and at the time of the speaking and publishing of the said words, was in great reputation and esteem amongst all his neighbours and acquaintance, and was then daily and honourably acquiring great profits and emoluments in the way of his aforesaid profession, to wit, at the parish of St. Mary-le-Bow, in the ward of Cheap, in L. aforesaid: And whereas a short time before the speaking and publishing of the several words in the three first Counts of this declaration mentioned, the said Alexander

ander, in the way of his said profession, had been employed to convene a meeting of creditors of one Peter Brown, who was then insolvent, and for that purpose the said A. had written and sent letters to divers of such creditors, and the said Alexander thereupon being retained and directed to prepare, and had accordingly prepared a certain deed, purporting to be an assignment from the said Peter Brown to one Richard Dowding and one Jacob Dimming, two of his said creditors, of certain property and effects of the said P. Brown, as trustees for the purpose of making a fair and rateable distribution of the money to arise from such property and effects (after certain payments particularly directed by the said deed) amongst themselves, and the other creditors of the said R. Brown, who should come in and execute the same, and thereby accept the benefit provided for such creditors as a composition for and in full discharge of their respective demands, which said deed had been duly executed by divers creditors of the said P. Brown, to wit, at L. &c. aforesaid; and the said D. who was then and there a creditor of the said P. Brown, entitled to come into such composition, and thereupon to have an equal benefit in proportion to his debt with the other creditors under the said assignment, but no greater or other benefit whatsoever; yet the said D. well knowing the premises, but contriving and maliciously intending wrongfully and unjustly to hurt and injure the said A. not only in his reputation, but also in his aforesaid profession, and to cause him to be suspected of dishonest, corrupt, knavish, and fraudulent practices therein heretofore, to wit, on the first of January A. D. 1790, at L. &c. aforesaid, in a certain discourse which the said D. then and there had with divers good subjects of this kingdom, he the said D. then and there falsely and maliciously said, spoke, and published in the presence and hearing of those subjects of and concerning the said composition and deed of assignment, and of and concerning the said A. and his conduct respecting the same, and also of and concerning a debt so due to the said D. from the said P. B. these false, scandalous, and defamatory words following; that is to say, "Dickson (meaning the said A.) offered, in case I (meaning himself the said Daniel) would give him (again meaning the said A.) five guineas, and sign the deed, (meaning the aforesaid deed) that he (again meaning the said A.) would procure for me (again meaning himself the said Daniel) the whole of my money, (meaning the whole of his said debt) and I (again meaning himself the said Daniel) have got it (meaning the whole of his said debt) in consequence," (meaning by the said several words that the said A. had for his own private emolument colluded with the said Daniel to procure him a fraudulent preference in respect of his debt over other creditors of the said P. B. coming in under the said deed:) And afterwards, to wit, on the day and year aforesaid, at L. &c. aforesaid, in a certain other discourse which the said D. then and there had with divers other good and worthy subjects of this kingdom, he the said Daniel then and there falsely and maliciously said, spoke, and published in the presence

3d Count.

4th Count.

presence and hearing of those last-mentioned subjects, of and concerning the said composition or deed of assignment, and of and concerning the said A. and his conduct respecting the same, of and concerning the debt so due to the said Daniel from the said P. B. these other false, scandalous, and defamatory words following, that is to say, "Dickson (meaning the said A.) offered to procure me (meaning himself the said Daniel) the whole of my money (meaning the whole of his said debt) if I (again meaning himself the said Daniel) would give him (again meaning the said A.) two guineas, and execute the deed, (meaning the aforesaid deed) for that he (again meaning the said A.) had the power in his (meaning the said A.'s) own hands, and I (again meaning himself the said Daniel) have by that means (meaning by means of having given such sum of money to the said A.) got all that was due to me" (again meaning himself the said Daniel, and also meaning and insinuating by the said last-mentioned words, that the said A. had assisted the said Daniel in procuring a fraudulent preference in respect of his said debt over the other creditors executing the said deed:) And afterwards, to wit, on the day and year aforesaid, at L. &c. aforesaid, in a certain other discourse which the said Daniel then and there had with divers other good subjects of this kingdom, he the said Daniel then and there falsely and maliciously said, spoke, and published in the presence and hearing of those last-mentioned subjects, of and concerning the letters hereinbefore mentioned to have been written by the said A. and of and concerning the said composition and deed of assignment, and the conduct of the said A. respecting the same, these other false, scandalous, and defamatory words following, *i. e.* "The letters that Dickson (meaning the said A.) wrote for the creditors (meaning the creditors of the said P. B.) to meet on the state of Brown's (meaning the said P. B.'s) affairs were only a blind, and entirely a measure between me, (meaning himself the said Daniel) Dickson, (again meaning the said A.) and the trustees" (meaning the said Richard Dowding and Jacob Dimming, and also meaning and insinuating by the said last-mentioned words, that the said A. was engaged with the said Daniel, the said Richard Dowding, and Jacob Dimming, in a collusive contrivance to deceive and defraud the other creditors of the said P. B.): And afterwards, on the day and year aforesaid, at L. &c. aforesaid, in a certain other discourse which the said Daniel then and there had with divers other good and worthy subjects of this kingdom, he the said Daniel then and there falsely and maliciously said, spoke, and published of and concerning the said A. in his profession and practice aforesaid of an attorney, in the presence and hearing of these last-mentioned subjects, these other false, scandalous, and defamatory words following, *i. e.* : "His (meaning the said A.'s) conduct has been such, as to put it in my (meaning his the said Daniel's) power to get him (again meaning the said A.) struck off the roll," (meaning by the said last-mentioned words, that the said A. had been guilty of mal-practice in his aforesaid profession, for which he the said Daniel might cause him to be struck off the roll of attorneys);
by

by means of the speaking and publishing of which said said several false, scandalous, and defamatory words, the said A. is not only greatly injured in his reputation, and also in his profession aforesaid, and brought into public scandal, infamy, and disgrace with and amongst all his neighbours and acquaintance, and suspected of dishonest, corrupt, knavish, and fraudulent practices in his said profession, but also one A. B. one C. D. and one E. F. who before the speaking and publishing of the said words, had severally employed the said A. in the way of his aforesaid profession, and would have continued to have done so had not such words been spoken, and in consequence of the speaking and publishing thereof, and on no other account whatsoever, ceased to employ him in such profession, and respectively wholly refused to have any future concerns with him, whereby the said Alexander hath lost and been deprived of all such profits and emoluments as would have accrued to him from continuing to be employed as an attorney by the said A. B. &c. respectively, and is also, by means of the premises, otherwise greatly injured and damnified, to wit, at L. &c. aforesaid, to the damage of the said A. of five hundred pounds, and therefore he brings suit, &c. pledges, &c.

S. MARRYAT.

Trinity Term, 12. Geo. III.

MIDDLESEX, to wit. Richardson, late of, &c. was attached to answer unto Allen in a plea of trespass on the case, and thereupon the said plaintiff, by A. B. by his attorney, complains, that whereas the said plaintiff now is a good, true, honest, just, and faithful subject of this realm, and as such a good, true, honest just, and faithful subject, always from the time of his nativity hitherto hath behaved, had, and governed himself, and hath always until the time of the speaking and publishing of the several false, scandalous, and defamatory words hereafter mentioned to have been spoken and published by the said defendant to, of, and concerning the said plaintiff, been held, esteemed, and reputed to be a person of good name, fame, credit, and reputation amongst all his neighbours and other good and worthy subjects of this realm, and hath not ever been guilty, or, until the time of the speaking and publishing of the several false, scandalous, and defamatory words hereafter mentioned, been suspected to have been guilty of any felony, fraud, knavery, trickery, deceit, or falsehood, or of any other such hurtful crime, by means whereof he the said plaintiff, before the speaking and publishing of the several false, scandalous, and defamatory words hereafter mentioned, had deservedly obtained and acquired to himself the benevolence, and good opinion, and credit of all persons any ways acquainted with him, and of divers good and worthy subjects of this realm to whom he was known, to wit, at Westminster, in said county of Middlesex; yet the said defendant, well knowing the premises, but contriving and maliciously intending wrongfully and unjustly to hurt, prejudice, injure, and damnify the said plaintiff in his aforesaid good name,

Declaration in
C. B. for words
of felony.

Words in the
third person.

3d Count.

3d Count.

4th Count.

5th Count.

Words in the
second person.

fame, credit, and reputation, and to bring him into the public hatred, scandal, and ignominy amongst all his neighbours and other good and worthy subjects of this realm to whom he was known, and to subject him to the pains and penalties by the laws and statutes of this realm made and provided against those who commit any kind of felony, larceny, fraud, trickery, cheating, or deceit, on the day of A. D. , to wit, at, &c. afore said, in a certain discourse which the said defendant then and there had with divers good and worthy subjects of this realm of and concerning the said plaintiff, he the said defendant then and there falsely and maliciously said, rehearsed, proclaimed, and loudly published these false, scandalous, and defamatory words following of and concerning the said plaintiff, in the presence and hearing of those subjects, that is to say, "He (meaning the said plaintiff) is a thief, I (meaning himself the said defendant) will call him (meaning the said plaintiff) a thief, and I (again meaning himself the said defendant) can prove him (again meaning the said plaintiff) one" (meaning a thief): And afterwards, to wit, on the same day and year afore said, at Westminster afore said, in a certain other discourse which the said plaintiff then and there had with divers other good and worthy subjects of this kingdom of and concerning the said plaintiff, he the said defendant then and there falsely and maliciously said, rehearsed, proclaimed, and loudly published these other false, scandalous, and defamatory words following, of and concerning the said plaintiff, in the presence and hearing of those last-mentioned subjects, that is to say, "He (meaning the said plaintiff) is as great a thief and gambler as any in the universe; he (again meaning the said plaintiff) has been tried at the Old Bailey, and he (again meaning the said plaintiff) ought to have been hanged many years ago." 3d Count, "He (meaning plaintiff) is a thief, a rogue, and a gambler, and I (meaning himself the said defendant) can prove him (again meaning the said plaintiff) a thief, and it is in my (meaning his the said defendant's) power to hang him (again meaning the said plaintiff)." 4th Count, "He (meaning plaintiff) has defrauded a mealman of a roan horse (thereby meaning that plaintiff had cheated and defrauded some person professing the business of a mealman of a roan horse)." And whereas afterwards, to wit, on the same day and year afore said, at, &c. afore said, in a certain other discourse which the said defendant then and there had with the said plaintiff in the presence and hearing of divers other good and worthy subjects of this realm of and concerning the said plaintiff, he the said defendant then and there falsely and maliciously said, rehearsed, proclaimed, and loudly published these other false, scandalous, and defamatory words following, to, of, and concerning the said plaintiff, in the presence and hearing of those last-mentioned subjects, that is to say, "You (meaning the said plaintiff) are a thief, a gambler, a rogue, and a villain; you (again meaning the said plaintiff) ought to be hanged; you (again meaning the said plaintiff) was tried at the Old Bailey, and it is in my (meaning his the said defendant's) power

power to hang you (again meaning the said plaintiff).” 6th 6th Count.
 Count, “ You (meaning the said plaintiff) are a thief, a rogue,
 and a gambler, and I (meaning himself the said defendant) can
 prove you (again meaning the plaintiff) a thief, and it is in my
 (meaning his the said defendant’s) power to hang you (again
 meaning the said plaintiff.” By means of the speaking and pub-
 lishing of which said several false, scandalous, and defamatory
 words, the said plaintiff is very much hurt, injured, prejudiced,
 and damnified in his aforesaid good name, fame, credit, and re-
 putation, and is fallen into public scandal, ignominy, and dis-
 grace amongst all his neighbours and other good and worthy sub-
 jects, to whom the innocence and integrity of the said plaintiff in
 the premises were unknown, insomuch, that those neighbours
 and subjects have always from the time of the speaking and pub-
 lishing of the said words hitherto so vehemently suspected the said
 plaintiff to have been and to be a and a , that they have
 on that account always from thence hitherto wholly refused, and
 still do daily more and more refuse to have any commerce, ac-
 quaintance, or discourse with him, or to have any thing to do
 with him as before they were accustomed to do, and would have
 done again had not those words been spoken, to wit, at W. afore-
 said; wherefore the said plaintiff saith he is injured, and hath sus-
 tained damage to the value of two hundred pounds; and therefore
 he brings his suit, &c.

Conclusion:

The words

SURRY, to wit. Elizabeth Beanch complains of Blackman
 Lyme, esquire, being in the custody, &c.; for that whereas the
 said plaintiff now is a good, true, faithful, and honest subject of
 this kingdom, and, as such a good, true, faithful, and honest
 subject, from the time of her nativity hitherto hath always behav-
 ed, had, and governed herself, and has always been esteemed and
 reputed amongst all her neighbours and other subjects of this king-
 dom to whom she was known, to be a woman of good name, fame,
 and credit, and has always hitherto lived free, untouched, unspotted,
 and wholly unsuspected of and from all and all manner of perjury,
 knavery, trickery, deceit, or falsehood, or any other such hurtful
 crime; by means whereof the said plaintiff, before the speaking
 and publishing of the several false, scandalous, and defamatory
 words, hereafter mentioned, had deservedly obtained and acquired
 to herself the benevolence, good opinion, and credit of all persons
 any ways acquainted with her, and of divers other good and worthy
 subjects of this kingdom; yet the said defendant, well knowing
 the said premises, but contriving and maliciously intending to hurt
 and injure the said plaintiff in her good name, fame, and credit,
 and to wholly destroy the same, and to bring her into public hatred,
 scandal, and ignominy, and to subject her to the pains and penal-
 ties by the laws and statutes of this realm made and provided
 against those who commit perjury, on the first day of November
 A.D. 1748, at Kingston upon Thames, in the said county of S. in

Declaration in B.
 R. for words of
 perjury.

246 TORTS.—WORDS INDUCING CORPORAL PUNISHMENT.

a certain discourse which the said defendant then and there had with divers other good and worthy subjects of this realm of and concerning the said plaintiff, he the said defendant then and there falsely and maliciously said, rehearsed, proclaimed, and loudly published these false, scandalous, and defamatory words following, of and concerning the said plaintiff, in the presence and hearing of those subjects, that is to say, &c. &c. &c. ; by means of the speaking and publishing of which said several false, scandalous, and defamatory words the said plaintiff is greatly hurt, prejudiced, injured, and lessened in her good name, fame, credit, and reputation, and is fallen into great scandal, ignominy, and reproach amongst her neighbours and other good and worthy subjects of this kingdom, insomuch that divers of those subjects to whom the innocence and integrity of the said plaintiff in the premises were unknown, have always from the time of the speaking and publishing of the said several false, scandalous, and defamatory words hitherto so vehemently suspected the said plaintiff to have been guilty of perjury, that they, on that account, have always since hitherto refused, and still do more and more refuse to have any conversation with her, or have any thing to do with her as before they were used and accustomed and would have done again, had not those words been spoken, to wit, at Kingston upon Thames aforesaid, in the said county of Surry, to the said plaintiff her damage of five hundred pounds ; and therefore she brings suit, &c. Pledges, &c.

Count for
words of sodomy.

FOR that whereas the said plaintiff now is a good, true, chaste, faithful, and honest subject of this kingdom, and as such, from the time of his nativity hitherto, hath always behaved, had, and governed himself, and hath always until the time of the speaking and publishing of the several false, scandalous, and defamatory words hereafter mentioned to have been spoken and published by the said defendant to, of, and concerning the said plaintiff, been held, esteemed, reputed, accepted, and taken to be a person of good name, fame, credit, and reputation amongst all his neighbours and other good and worthy subjects of this realm, and hath not ever been guilty, or until the time of speaking, &c. [as before] been suspected to have been guilty of that horrid and detestable crime, not fit to be named amongst christians, called sodomy or buggery, or of any other such enormous crime, by reason whereof the said plaintiff, before the time of the speaking, &c. had deservedly obtained and procured to himself the benevolence, good opinion, and credit of all his neighbours, and divers other good and worthy subjects of this realm, to whom he was known ; yet the said defendant, well knowing all and singular the premises aforesaid, but greatly envying the happy state and condition of plaintiff, and contriving and maliciously intending, wrongfully and unjustly, to injure him the said plaintiff in his aforesaid good name, fame, credit, and reputation, and to bring him into public scandal, reproach, and infamy amongst all his neighbours and
divers

divers other good and worthy subjects of this kingdom, and also to subject him the said plaintiff to the pains and punishments by the laws and statutes of this realm made and provided against persons guilty of the horrid and detestable crime called sodomy or buggery, on the day of A. D. at, &c. in a certain discourse which the said defendant then and there had with the said plaintiff, in the presence and hearing of divers good and worthy subjects of this realm, he the said defendant then and there falsely and maliciously said, rehearsed, proclaimed, and loudly published these false, scandalous, and defamatory words following, to, of, and concerning the said plaintiff, in the presence and hearing of those subjects, that is to say, &c. &c. &c. ; by means of the speaking and publishing of which said several false, scandalous and defamatory words, to, of, and concerning the said plaintiff, he the said plaintiff is greatly hurt, injured, and prejudiced in his aforesaid good name, &c. and is brought into public scandal, infamy, and disgrace amongst all his neighbours, and divers other good, &c. subjects of this kingdom, insomuch that divers of those neighbours and subjects, to whom the innocence of the said plaintiff in the premises was unknown, have, on occasion of the speaking, &c. of those words, from thence hitherto wholly refused, and still do daily more and more refuse to have any commerce, acquaintance, or discourse with him, or to have any thing to do with him, as they before were accustomed to do, and would have done again, had not those words been spoken ; and the said plaintiff is, on occasion of the speaking and publishing of those words, otherwise greatly injured and damnified, to wit, at, &c. ; damages, &c. ; suit, &c.

LONDON, to wit. William Holdsworth complains of ——— Declaration in
Rushworth, being in the custody, &c. ; for that whereas he the said B. R. for words
plaintiff now is a good, true, honest, just, and faithful subject of of insolvency
this realm, and as such hath always from his nativity hitherto be- and bankruptcy,
haved and governed himself, and until the speaking and publishing whereby de-
of the several false, scandalous, and defamatory words hereafter fendant gained
specified by the said defendant of and concerning the said plaintiff, several of pla.n-
he the said plaintiff was always reputed, esteemed, and accepted tiff's customers.
amongst all his neighbours, and other good and worthy subjects of
this realm to whom he was known, to be a person of good name,
fame, credit, and reputation, to wit, at L. aforesaid, in the parish
of St. Mary-le-bow, in the ward of Cheap: And whereas before,
and at the time of the speaking and publishing of the several false,
scandalous, and defamatory words hereafter specified by the said
defendant of and concerning the said plaintiff, he the said plaintiff
did use, exercise, follow, and carry on, and from thence hitherto
hath used, exercised, followed, and carried on, and still doth use,
exercise, follow, and carry on the trade or business of an ink-maker,
and dealer in, and seller of ink, during all the time aforesaid, hath
used, exercised, and followed, and carried on with honesty and good
credit, always well and faithfully keeping up his credit and days

of payment with all his creditors, and during all that time hath been ready, able, and willing to pay and discharge all his just debts by him from time to time contracted with all or any of his creditors in his trade aforesaid, or otherwise, and hath never yet been, or until the time of the speaking and publishing of the several false, scandalous, and defamatory words hereafter mentioned by the said defendant of and concerning the said plaintiff, been suspected to have been guilty of any act of insolvency, or of any act of bankruptcy, breaking, or becoming bankrupt or insolvent; by means of which said premises he the said plaintiff, before the speaking and publishing of the several false, scandalous, and defamatory words hereafter specified by the said defendant of and concerning the said plaintiff, had deservedly gained the good opinion and credit of all his neighbours, and other good and worthy subjects of this realm to whom he was known, and also duly and honestly acquired sundry great gains and profits in his aforesaid business to the very comfortable support of himself and his family, and to the great increase of his riches, to wit, at L. &c. aforesaid; yet the said defendant, well knowing all and singular the premises aforesaid, but contriving and maliciously intending, wrongfully and unjustly to injure the said plaintiff in his aforesaid good name, fame, credit, and reputation, and in his business aforesaid, and to cause him to be brought into public scandal, infamy, and disgrace, and to be esteemed and suspected to be a bankrupt and an insolvent person, and a person not capable to pay or discharge his just debts, and to subject him to the laws and statutes of this realm now in force concerning bankrupts and insolvent persons, heretofore, to wit, on the day of in A. D. 1771, at L. &c. aforesaid, in a certain discourse which he the said defendant then and there had with divers good and worthy subjects of this realm, who were customers of and dealers with the said plaintiff in the way of his aforesaid business, of and concerning the said plaintiff in his business, he the said defendant then and there falsely and maliciously said, rehearsed, proclaimed, and loudly published, of and concerning the said plaintiff in his aforesaid business, in the presence and hearing of those subjects, these false, scandalous, and defamatory words following, that is to say, "He (meaning the said plaintiff) has been arrested, and is insolvent:" And afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, in a certain other discourse which the said defendant then and there had with one —, (being a person of whom the said plaintiff was used and accustomed to buy divers goods and merchandizes in the way of his said business, upon credit, and without ready money, and to whom the said plaintiff then stood indebted in a certain sum of money, to wit, the sum of pounds, for divers goods, wares, and merchandizes, which the said plaintiff had before that time bought of the said on credit, and which said sum of money he the said plaintiff, at the time of the speaking and publishing of the several false, scandalous, and defamatory words hereafter next-mentioned, was able, and ready, and willing to pay to the said) in the presence

About the time.

1st Count,
words spoken to
a creditor of the
plaintiff's.

presence and hearing of divers good and worthy subjects of this realm of and concerning the said plaintiff in his business aforesaid, he the said defendant then and there falsely and maliciously said, rehearsed, proclaimed, and loudly published to the said , of and concerning the said plaintiff in his aforesaid business, in the presence and hearing of those last-mentioned subjects, these other false, scandalous, and defamatory words following, that is to say, "It is better to get goods from him (meaning from the said plaintiff) as there is no money to be had (meaning thereby that plaintiff was insolvent), and thereby you (meaning the said) may get fifteen shillings in the pound for your (meaning the said 's) debt (meaning the aforesaid debt), otherwise you (again meaning the said) will not have five shillings in the pound" (meaning thereby that the said plaintiff was insolvent, and unable to pay to the said five shillings in the pound of the debt he owed him :) And afterwards, to wit, on the same day and year aforesaid, at, ^{3d Count.} &c. aforesaid, in a certain other discourse which he the said defendant then and there had with divers other good and worthy subjects of this realm, of whom the said plaintiff was used and accustomed to buy divers goods and merchandizes in the way of his aforesaid business, upon credit, and without ready money, of and concerning the said plaintiff in his business aforesaid; and the said defendant then there falsely and maliciously said, rehearsed, proclaimed, and loudly published, of and concerning the said plaintiff in his aforesaid business, in the presence and hearing of those last-mentioned subjects, these other false, scandalous, and defamatory words following, that is to say, "He (meaning the said plaintiff) is insolvent and a bankrupt." [4th Count, "He is insolvent"]; ^{4th Count.} by means of the speaking and publishing of which said several words he the said plaintiff is greatly injured in his aforesaid good name, fame, credit, and reputation, and in his business aforesaid, and is brought into public scandal, infamy, and disgrace amongst all his neighbours and other good and worthy subjects of this realm, to whom he was known, insomuch that many of those neighbours and subjects, to whom the innocence and integrity of the said plaintiff in the premises were unknown, have, on occasion of the speaking and publishing of the said several words, from thence hitherto suspected, and still do suspect the said plaintiff to have been and to be an insolvent person, and a person not capable or able to pay or discharge his just debts by him contracted, and to be a bankrupt; and also on occasion of the premises aforesaid, divers good and worthy subjects of this realm, of whom the said plaintiff was used and accustomed to buy divers goods and merchandizes in the way of his aforesaid business, upon credit, and without ready money, have, since the speaking and publishing of the said several words, wholly refused to give him any credit, or to sell him any goods or merchandizes without ready money, and the said plaintiff is otherwise greatly injured, to wit, at London, &c. aforesaid: *And whereas* the said plaintiff, long before and at the time of the committing of the grievance hereafter next mentioned, did use, exercise,

exercise, follow, and carry on, and from thence hitherto hath used, exercised, followed, and carried on, and still doth use, exercise, follow, and carry on the art, trade, or business of an ink-maker, and a dealer in and seller of ink, and during all that time hath used, exercised, followed, and carried on, and still doth use, exercise, and carry on the said business by himself only, and in his own right and name, without having any partner or joint adventurer, or being in partnership or a joint dealer with the said defendant or any other person or persons whatsoever, to wit, at L. &c. aforesaid: And whereas long before, and at the time of the committing of the grievance hereafter next-mentioned, the said defendant did use, exercise, follow, and carry on the trade and business of an ink-maker, and dealer in and seller of ink, and as such was used and accustomed to sell ink for and on his own account, and for his own fair profit, and not for or on account of, or for the gain, profit, benefit, or advantage of the said plaintiff, or in partnership with him the said plaintiff, to wit, at L. aforesaid: And whereas before and at the time of the committing the grievance hereafter next-mentioned, one was a customer of him the said plaintiff in the way of his aforesaid trade and business, and was used and accustomed to buy ink of the said plaintiff, in the way of his said trade or business aforesaid, and the said plaintiff was by such sale of ink to the said , used and accustomed honestly to acquire and gain a certain reasonable profit and advantage, to wit, at L. aforesaid; yet the said defendant, well knowing all and singular the premises, but contriving and maliciously intending, wrongfully and unjustly to injure the said plaintiff in his business aforesaid, and to deprive him of the custom of the said , and of the sale of his ink, and to the said , and of the profits of the sale thereof, and to reap an unjust profit and advantage to himself the said defendant, he the said defendant, whilst the said was such customer of the said plaintiff heretofore, to wit, on the day of , in the year aforesaid, at London, &c. aforesaid, falsely, deceitfully, wrongfully and unjustly insinuated and pretended unto the said , so being the customer of the said plaintiff, and who was so used and accustomed to deal with the said plaintiff, to buy ink of him in the way of his aforesaid business, that he the said defendant was a partner with the said plaintiff in the way of his aforesaid business, and then and there requested the said to give him an order for, and to buy ink of him the said defendant, as being a partner with the said plaintiff; and by means of such false insinuation and pretence the said defendant then and there wrongfully and deceitfully obtained and received orders from the said , so being a customer of the said plaintiff, for the sale of a certain quantity of ink, to wit, gallons of ink, on a supposition that the said defendant was in reality a partner with the said plaintiff, and did afterwards, to wit, on the day and year last aforesaid, at L. &c. aforesaid, wrongfully and deceitfully get to himself the sale of the said ink, and did then and there sell the same to the said , so being a customer of the said plaintiff, as if he the said defendant then was, and under the pretence that he the said defendant then was the partner of the

the said plaintiff for a certain sum of money, to wit, the sum of pounds, and then and there wrongfully and deceitfully procured and got to himself the receipt of the said money for the same, whereby the said plaintiff was then and there greatly injured in his trade and business to the said , and thereby lost and was deprived of the profit he might and would have got by the sale of a like quantity of ink to the said , to wit, at L. &c. aforesaid, to the said plaintiff his damage of five hundred pounds; and therefore he brings his suit, &c. Pledges, &c.

MIDDLESEX, to wit. M. O. widow, complains of D. B. and E. his wife, being in the custody, &c.: for that whereas the French pox always was, and still is esteemed among all persons a disease so nasty, contagious, infectious, and detestable, insomuch that every one avoids the company and conversation of such persons who are infected with that putrid and detestable distemper, or who are said or reputed to be infected and tainted therewith, and also altogether refuse and abhor to have any commerce or fellowship, or to eat or drink with, or to have any thing to do with such person infected, or reputed to be infected and tainted with that loathsome distemper: And whereas said Margaret now is a good, true, pious, chaste, modest, and honest subject of this realm, and as such a good, &c. from the time of her nativity hitherto hath always behaved, had, and governed herself, and at the time of the speaking and publishing of the several false, scandalous, and defamatory words hereafter mentioned to have been spoken and published by the said Elizabeth of and concerning the said Margaret, was, and for a long time then last past had been, and still is a single and unmarried woman, and has always until, &c. been said, held, and reputed to be a woman of good name, fame, credit, reputation, conversation, and behaviour amongst all her neighbours and other good and worthy subjects of this kingdom, without committing, and until the time of the speaking and publishing of the several false, scandalous, and defamatory words hereafter mentioned to have been spoken and published by the said Elizabeth of and concerning the said Margaret, without suspicion of committing of any kind of unchastity, fornication, adultery, whoredom, carnal knowledge of any man whatsoever except of Owen, her late husband, who long before the speaking and publishing of the said words, was deceased, or of any other such hurtful or obnoxious crime, and has hitherto lived free from, untouched, and untainted with the French pox, and all other such nasty, infectious, and poisonous distempers, and until the time of the speaking, &c. of the said several false, &c. hath lived and continued unsuspected of being tainted or infected with the said distemper, or with any other such nasty and poisonous disease; and by reason thereof she the said M. has been not only used to possess and enjoy the company, conversation, and society of her friends, neighbours, and companions, and of all other good and faithful subjects of this realm, to whom

Declaration against husband and wife, for words spoken by defendant's wife of a woman (French pox), whereby marriage lost.

Qu. If necessary? Or, if defendants dared put it in issue.

whom she was known, to the very comfortable support of her life, and had also deservedly obtained and got to herself the benevolence, good opinion, and credit of all her neighbours and friends; but also by means thereof one

Winter, a man of considerable estate and great wealth, who was then, and for a long time after the speaking, &c. of the several false, &c. words hereafter mentioned, a single and unmarried man, and the said M. had and bore a great love, friendship, esteem, and kindness for him the said

Winter, and was very desirous to marry with, and be joined in wedlock to him the said

W.; and thereupon the said M. and W. had divers meetings, and many discourses

*together about the marriage to be solemnized between them, in-
somuch that by means of these meetings and discourses a mar-*

riage was very near and likely to have been concluded, and would have been concluded between them, whereby she the said

M. would have been preferred to a much more wealthy, happy, agreeable, and comfortable state and condition of life; neverthe-

less the said E. the wife of the said D. well knowing the pre-

mises, but contriving and maliciously intending to hurt, preju-

dice, and entirely to degrade her the said Margaret in her good

name, fame, credit, and reputation, and to make and cause her

to be brought into disgrace, infamy, and public scandal amongst

all her neighbours, and to cause her to be esteemed, accepted,

and reputed to be an incontinent, unchaste, and immodest person,

and a woman tainted with the French pox, and by reason thereof

not only to make her neighbours, friends, and other persons to

whom she ever was known to abhor and detest her, and to with-

draw themselves from her company and conversation, but also to

make the said

Winter abhor and detest her the said Margaret, and withdraw himself from her company and conversation, and

thereby prevent and binder the said intended marriage between the

said Margaret and Winter from taking effect, on the

day of

A. D. at Westminster, in the county of Mid-

dlex afore said, in a certain discourse which the said Elizabeth,

the wife of the said D. then and there had with divers good and

worthy subjects of this realm, of and concerning the said M.

she the said E. then and there falsely and maliciously said, re-

hearsed, proclaimed, and loudly published these false, scanda-

lous, and defamatory words following, of and concerning the

said M. in the presence and hearing of those subjects, that is to

say, "She (meaning the said M.) is a nasty, rotten, stinking

whore (meaning that she the said M. was a whore, and rotten with

the French pox), and was the death of Mr. Payne (meaning one

Payne, who was then lately deceased), by poisoning him" (mean-

ing by giving to the said Payne the disease called the French

pox): And whereas, &c. [there were a number of Counts upon

other words]; by means of the speaking, &c. of the said several

false, scandalous, and defamatory words, she the said M. is

greatly hurt, injured, and damnified in her afore said good name,

fame, credit, and reputation, and is brought into public scandal,

ignominy,

'Any day about
the time, but the
very day is not
material.

ignominy, hatred, contempt, and disgrace, and ever since the speaking, &c. of the said words, hitherto hath been and still is accepted and reputed to be a libidinous, unchaste, and immodest person, and a person tainted, infected, and rotten with the French pox, and divers of her neighbours and friends, with whom the said Margaret was used to associate herself, and who used to have conversation with her, and to keep her company, have avoided, shunned, and abhorred her as a person infected with the French pox, and have from time to time ever since the speaking and publishing of the said several words, hitherto refused and desisted, and still do daily refuse and desist from having any conversation with her, or having any thing to do with her, or keeping her company as before they were used and accustomed to do, and would have done again, had not those words been spoken, *and the said Winter hath ever since the said speaking and publishing of the said several words hitherto shunned and abhorred the said Margaret, and wholly refused ever to marry the said Margaret, whereby the said Margaret hath lost all the wealth and preferment, comfort, and happiness which she the said M. would otherwise have gained by the said intended marriage with the said Winter, to wit, at Westminster aforesaid: And whereas the French pox always was, and still is esteemed amongst all persons a disease so nasty, &c. [Another set of Counts, without taking any notice of Winter, or of the intended marriage, because plaintiff's attorney was not certain that Winter discontinued his addresses on account of those words].*

BUCKS, to wit. N. S. complains of H. D. being, &c.: Declaration for
 for that whereas the said N. now is a good, true, honest, just, and faithful subject, and as such a good, &c. hath always from his nativity hitherto behaved and governed himself and at the time of the speaking, &c. for a long time then next following, was a single and unmarried man, and until, &c. hath always been reputed and accepted amongst all his neighbours, and other good and worthy subjects of this realm, to be a person of good name, fame, and credit, to wit, at Winslow, in the county aforesaid: And whereas he the said N. hath not ever been guilty of any fraud, deceit, or falsehood, or of any other such hurtful crime, by means whereof he the said N. before the speaking, &c. gained the good opinion, credit, favour, and benevolence of all his neighbours, and of other good and worthy subjects of this realm; and also by means thereof one E. P. a woman of considerable estate and wealth, who then, and for a long time after the speaking, &c. was a single and unmarried woman, had and bore a great love, friendship, esteem, and kindness for and towards the said N. and had a great desire and inclination to contract herself to the said N. in wedlock, and to take him to her husband, and he the said N. had also a great love, &c. for her the said E. P. and was very desirous to be married and joined in wedlock to her the said E. P.; and thereupon the said N. and E. P. had divers meetings
 and

Declaration for words spoken to a man, by which plaintiff lost the marriage of one woman, and having afterwards married another, her father would not give her any marriage portion.

Gravamen.

Colloquium.

2d Count.

and many discourses together about a marriage to be had and solemnized between them, insomuch that by means of those meetings and discourses a marriage was very near and likely to have been concluded, and would have been concluded between them, whereby the said N. would have been preferred to a much more wealthy and happy state and condition of life, to wit, at Westminster aforesaid; yet the said H. well knowing all and singular the premises aforesaid, but greatly envying the happiness of the said N. and contriving and maliciously intending wrongfully and unjustly to prejudice, degrade, and injure the said N. in his aforesaid good name, fame, credit, and reputation, and to cause him to be brought into public scandal, infamy, and disgrace, and to make the said E. P. abhor and detest the said N. and to withdraw herself from his company and conversation, and thereby to prevent and hinder the said intended marriage between the said E. P. and H. from taking effect heretofore, to wit, on, &c. at, &c. aforesaid, in a certain discourse which the said H. then and there had with the said N. in the presence and hearing of divers good and worthy subjects of this realm, of and concerning said N. she the said H. then and there falsely, &c. said, &c. of and concerning said H. in the presence and hearing of those subjects, these false, &c. words following, that is to say, &c.: And afterwards, to wit, on same day and year aforesaid, in a certain other discourse which said H. then and there had with divers other good, &c. &c. [as before, adding as many Counts forwards as are necessary]: And afterwards, on same day and year, &c. aforesaid, the said H. of her further malice towards said N. in the presence and hearing of divers other good, &c. &c. falsely, &c. reported, asserted, declared, and published of and concerning the said N. that the said N. &c. &c. &c. by means of the speaking and publishing of which said several false, &c. words by the said H. of and concerning said N. he said N. is not only greatly hurt, injured, prejudiced, and degraded in his aforesaid good name, &c. and brought into public scandal, infamy, and disgrace, but also by reason of the speaking, &c. and of the reporting, asserting, publishing, and declaring of the matter so reported as aforesaid, the said E. P. hath from thence hitherto shunned and abhorred said N. and wholly refused ever to marry him said N. whereby said N. hath lost all the happiness, wealth, and preferment which he said N. would otherwise have gained by said intended marriage with said E. P. to wit, at, &c. aforesaid: And whereas said N. now is, and for his lifetime has hitherto been a man of good name, fame, and credit, and as such was always until the committing of the grievance hereafter mentioned, reputed and esteemed amongst all his neighbours, and other good and worthy subjects of this realm, to whom he was in any wise known: And whereas the said N. on, &c. at, &c. aforesaid, intermarried with and took to his wife one S. S. the daughter of one T. S. of, &c. who, at the time of the said marriage, was, and from thence hitherto hath been, and still is a man of great wealth and riches, and

and who, during all that time, was capable to give, and who, had it not been for the grievance hereafter mentioned, would have given to the said N. a large sum of money and other effects as a marriage portion with the said S. S. to the said N. and the said N. on that marriage was, and from thence until the grievance hereafter mentioned, hath been taken and had in great esteem, love, and friendship by the said T. S. *and the said N. never was married to the said H. or to any woman whomsoever, other than and except to the said S. S. to wit, at, &c. aforesaid;* yet the said H. well knowing the premises, but contriving falsely and maliciously intending wrongly and unjustly to injure the said N. afterwards, to wit, on, &c. at, &c. aforesaid, in the presence and hearing of divers other good and worthy subjects of this realm, falsely and maliciously reported, &c. of and concerning said N. that, &c. by means whereof said N. is greatly prejudiced in his credit and reputation, and the said T. S. on occasion of the premises, hath, ever since the committing of the said grievance, hitherto abhorred, shunned, and detested the said N. and refused to permit, and still doth daily more and more refuse to permit the said N. or his said wife, to keep him company, or to be with or visit him, and hath also wholly refused, and still refuses to give any marriage portion to the said N. with the said S. S. which he otherwise would have done, and the said N. is also otherwise greatly injured and damnified, to wit, at, &c. aforesaid. Damages, &c. Suit, &c. Pledges, &c.

To be agreeable
to the case.

MIDDLESEX, to wit. John, earl of Sandwich, one of the peers and great men of this realm of Great Britain, who professes in this behalf as well for our sovereign lord the king as for himself, complains against John Millar being in the custody, &c.; for that whereas *at the time of devising, speaking, telling, printing, and publishing of the false, scandalous, malicious, and defamatory libel hereinafter next mentioned,* the said earl was a peer of this realm of Great Britain, and one of the privy council of our said present lord the king, and first commissioner for executing the office of high admiral of Great Britain, that is to say, at Westminster, in the county of Middlesex aforesaid; yet the said John Millar, not regarding the statute in that case made and provided, but contriving and maliciously intending to draw and bring the said earl into disgrace, contempt, and ignominy with the lord the now king, and the peers and great men of this realm, and to cause to be believed that the said earl had acted corruptly in his said office of first commissioner for executing the said office of high admiral, and had put up offices in the navy to public sale, and to insinuate and cause it to be believed that the office of commissary

Declaration *for
scandalum magnatum of the first
lord of the ad-
miralty in his
office, by way of
libel in a public
newspaper.

* Punishable by imprisonment, and recovered in an action founded upon that by Wil. 1. c. 34. as well as rendering damages to the person injured, to be 2. Rich. 2. *tam pro domino rege quam pro se ipso*.

plaintiff, before and on the seventeenth of March A. D. 1771, and also before the committing of the grievance hereafter next mentioned, and the speaking, &c. of the several false, &c. words hereinafter mentioned by said defendant of and concerning said plaintiff, to wit, at, &c. aforesaid, was lawfully possessed of and in a certain messuage or dwelling-house, situate, standing, and being in the parish of St. Paul, Shadwell, aforesaid, and also of and in a certain stock in trade, household furniture, and other property of him the said plaintiff to a large amount there, to wit, on the same day and year, at the parish of, &c. aforesaid, stored and being in said messuage or dwelling-house of said plaintiff, to wit, at the parish of, &c. aforesaid: And whereas said stock in trade, household furniture, and other property of him the said plaintiff so as aforesaid being in the said messuage, &c. of said plaintiff, were, before and on the same day and year, to wit, at, &c. aforesaid, duly insured by him said plaintiff from loss or damage by fire in a certain society or office commonly called *The Sun Fire Office in London*; to the amount of the true value thereof, to wit, at, &c. aforesaid: And whereas the said plaintiff being so as aforesaid possessed of and in said messuage or, &c. and of and in the said stock in trade, household furniture, and other property of him said plaintiff as aforesaid stored and being therein, and the same stock in trade, household furniture, and other the property of said plaintiff being so insured as aforesaid, whilst he the said plaintiff was so as aforesaid possessed of the said several premises, and whilst said stock in trade, furniture, and other property of said plaintiff in said messuage of said plaintiff being as aforesaid, were so insured as aforesaid, to wit, on same day and year, at, &c. aforesaid, not only said messuage or dwelling-house of said plaintiff was by mere accident and unavoidable misfortune then and there much and greatly damaged by fire, but the said stock in trade, household furniture, and other property of him said plaintiff so as aforesaid insured, were then and there also by mere accident and unavoidable misfortune wholly burnt and consumed by fire, to wit, at, &c. aforesaid: And whereas said plaintiff, by means of his said stock in trade, household and other property so insured as aforesaid being burnt and consumed by fire as aforesaid, did suffer a damage or loss to the amount or sum of six hundred and fifty-one pounds six shillings and tenpence of lawful money of Great Britain, by means whereof the stock and fund of the said society was subject and liable to pay to said plaintiff, and said plaintiff thereby became and was legally and justly intitled to receive of and from the said society or office the sum of, &c. of lawful, &c. being the true and real amount of such his said damage or loss as aforesaid, to wit, at, &c. : And whereas said plaintiff hath not ever been guilty, or until the time of committing the grievance hereafter next mentioned, and of the speaking, &c. of the several false, &c. words hereinafter mentioned by said defendant of and concerning said plaintiff, been suspected to have been guilty of arson, burning of houses, felony, or fraud, or of any other such hurtful crime, by means of which said

MALICIOUS PROSECUTION ON CRIMINAL CHARGE.

several premises he the said plaintiff had before the committing, &c. also before the speaking, &c. deservedly obtained the benevolence, good opinion, and credit of all his neighbours, and of divers other good and worthy subjects of this realm to whom he was in any wise known, to wit, at, &c. aforesaid; yet said defendant, well knowing all and singular the premises, but greatly envying the happy state and condition of said plaintiff, and contriving and maliciously intending wrongfully and unjustly not only to injure said plaintiff in his aforesaid good name, fame, credit, and reputation, and to bring him into public scandal, infamy, and disgrace, and to make it to be credited and believed that the said plaintiff was and is a person guilty of arson, felony, and fraud, and to subject him to the pains and penalties by the laws of this realm made and provided against and inflicted on persons guilty of arson, but also to make it be credited and believed that said plaintiff had been and was at the time the said fire so happened as aforesaid, insured at a much larger sum of money than his said stock in trade, household furniture, and other property of him said plaintiff which had been and was so insured, and had been and was so burnt and consumed as aforesaid were justly worth, and that said plaintiff had feloniously, voluntarily, and maliciously set fire to his said messuage or, &c. with intent to burn and consume the same, and that said plaintiff had feloniously, voluntarily, and maliciously burnt and consumed his said stock in trade, household furniture, and other property of him said plaintiff so therein being as aforesaid, with an intent, and in order and on purpose to cheat and defraud the said society or office of a large sum of money beyond and more than the just and true value thereof, and to prevent and hinder said plaintiff from reaping any benefit from his said assurance, and from receiving or being paid by said society or office said damage or loss of, &c. which he said plaintiff so as aforesaid sustained, by the means, and on account of said fire, and against which he was so insured as aforesaid, *and to disquiet said plaintiff, and to make him suffer and undergo many arduous labours and troubles both of body and mind, and to impoverish and wholly ruin him heretofore, to wit, on the twentieth of March A. D. 1777 aforesaid, to wit, at, &c. aforesaid, falsely and maliciously, and without any reasonable or probable cause whatsoever, made a complaint against said plaintiff before J. S. Esquire, then and now being one of the justices of our lord the now king assigned to keep the peace of our said lord the king in and for the county of Middlesex, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, and then and there charged and accused him said plaintiff with, and imposed on him the crime of felony. to wit, with having feloniously, wilfully, and maliciously set fire to his said messuage, &c. and then and there upon said complaint so as aforesaid falsely, &c. made by said defendant against said plaintiff as aforesaid, forced and obliged said plaintiff to be and appear, and the said plaintiff was thereby then and there convened and obliged to appear, and did then and there appear before the said justice to answer the premises so as aforesaid*
falsely

falsely and maliciously laid to his charge, and said defendant also then and there, to wit, on the day and year last aforesaid, at, &c. aforesaid, falsely, &c. and without any, &c. caused and procured said plaintiff to be examined by and before said justice, of and upon touching and concerning said crime so as aforesaid falsely, &c. laid to his charge, and alledged against him, and to be kept and detained in custody under such examination for a long space of time, to wit, for the space of twelve hours then next following, under colour and pretence of the said supposed crime, when in truth and in fact said plaintiff was not, nor is in anywise guilty of the felony and premises so as aforesaid falsely, &c. by said defendant alledged against him said plaintiff, and so it then and there fully appeared on said examination aforesaid of said plaintiff to said J. S. esquire, so being such justice as aforesaid; whereupon said J. S. esquire being such justice as aforesaid upon said examination of said plaintiff, and after he had fully heard and considered every thing that said defendant could say or alledge against him said plaintiff touching said supposed crime, to wit, on the day, &c. aforesaid, at, &c. aforesaid, wholly acquitted and discharged said John of and from said supposed crime, to wit, at, &c. aforesaid:

2d Count.

And said defendant contriving and maliciously intending as aforesaid heretofore, on the eighteenth of March A. D. 1777 aforesaid, to wit, at, &c. aforesaid, in a certain discourse which he said defendant then and there had with divers good and worthy subjects of this realm, of and concerning said plaintiff, and of and concerning said fire that had so as aforesaid accidentally happened in his said messuage or, &c. he said defendant then and there falsely and maliciously said, rehearsed, proclaimed, and loudly published of and concerning said plaintiff, in the presence and hearing of these subjects, these false, &c. words following, that is to say, "Here is a fine piece of work (meaning and alluding to said fire that had so as aforesaid accidentally happened in said messuage, &c. of said plaintiff); unless we appear against this man (meaning said plaintiff) we shall not be able to sleep safe in our beds" (thereby then and there meaning and insinuating that plaintiff had and did feloniously &c. set fire to his said house, and had feloniously, &c. burnt and consumed said stock in trade, &c. so therein being as aforesaid, with an intent to defraud said society or office): (Colloquium concerning plaintiff and the fire.) Words: "Unless we hinder him from getting his insurance, we shall never be able to sleep safe in our beds" (meaning and insinuating as before): (Colloquium concerning plaintiff and the fire.) Words: "If we don't bring this man to justice, (thereby then and there meaning and insinuating that said plaintiff had and did feloniously, &c. set fire to, &c. and that that he ought to be punished for so doing) we shall not sleep safe in our beds:" (Like colloquium.) Words: "I believe that he set fire to his house" (meaning that plaintiff did feloniously, &c.): (Colloquium, concerning plaintiff, fire, insurance, and loss.) Words: "He set it (meaning, &c.) on fire (meaning that said plaintiff had and did feloniously, &c.) he has insured for a large sum, I believe he had little or no property in his house" (meaning

3d Count.

4th Count.

5th Count.

6th Count.

- that said plaintiff had insured his stock in trade, &c. which had been so burnt and consumed as aforesaid, for a much greater and larger sum of money than the same were worth, or *than* the just and true value thereof, and that plaintiff had feloniously &c. with intent to cheat and defraud the said society): (Like colloquium.) Words: "If we allow such a fellow as this to recover his insurance, we shall never be able to sleep safe in our beds" (meaning, &c. (Like colloquium.) Words: "We must hinder Routledge, of New Crane, from getting his insurance, or we shall never be able to sleep," &c. &c. &c. (colloquium, concerning plaintiff and fire.) Words: "We must bring this man to justice: Let us prosecute him." (Like colloquium.) Words: "I am sure he set fire to his house" (Colloquium concerning plaintiff, fire, insurance, and loss) Words: "Ten or fifteen pound's worth of sailor's jackets made a great shew" (thereby then and there hinting, insinuating, and intending to have it understood by the said persons in whose presence and hearing he so as aforesaid spoke and published the said last-mentioned words, that said plaintiff had insured his stock, &c. &c. as before). (Like colloquium) Words: "I wonder his correspondence has increased so much as to have such a stock in so short a time as three or four years" (meaning, &c. Add a similar inuendo, as in the last Count)
- 7th Count. 8th Count. 9th Count. 10th Count. 11th Count. 12th Count. Spoken obliquely. 13th Count. 14th Count, inducement words spoken to one of the members of society for insuring from fire.
- And afterwards, and before said John made any application of or to the trustees or acting members then being of and from the said society to receive and be paid the said sum of six hundred and fifty-one pounds six shillings and tenpence, being the just and true amount of the damage and loss which he said plaintiff had so as aforesaid suffered by and on account of said fire, and from and against which he was so as aforesaid insured by said society, and which the stock and fund of the said society was subject and liable to pay to said plaintiff, and which he said plaintiff was legally and justly entitled to receive of and from said society, to wit, on the day and year last aforesaid, at; &c. aforesaid, in a certain discourse which he said defendant then and there had with one John Mason, he the said J. M. then and there being one of the trustees and an acting member of said society, and a good and worthy subject, &c. of and concerning said plaintiff, and of and concerning said fire that had so as aforesaid accidentally happened in his said messuage or, &c. and also of and concerning said insurance and loss of said plaintiff, he said defendant then and there falsely, &c. said, &c. of and concerning said plaintiff, to and in the presence, &c. said J. M. so as aforesaid being one of the trustees and, &c. these false, &c. words, that is to say, "If you (then and there addressing himself to and meaning said J. M. so as aforesaid being one, &c.) pay his (meaning said plaintiff's) insurance (meaning said damage or loss which he said plaintiff had so as aforesaid suffered by and on account of said fire, and from which he was so as aforesaid insured by said society) we shall never be able to sleep safe in our beds (thereby then and there meaning and insinuating that said plaintiff had and did feloniously, &c. set fire to his said, &c. and had feloniously,

niouſly, &c. ſet fire to and burnt, &c. his ſaid ſtock in trade, &c. of him ſaid plaintiff ſo therein being and ſo insured as aforeſaid, with intent to cheat, &c. ſaid ſociety); your ſurveyor (meaning the ſurveyor of, for, or to ſaid ſociety) can affect his (meaning ſaid plaintiff) life" (not only then and there meaning as before, that ſaid plaintiff had feloniously, &c. ſet fire to his ſaid houſe, but that the ſurveyor of, &c. ſaid ſociety well knew and could prove ſame againſt the ſaid plaintiff): Like inducement (ſaying of " ſaid 15th Count. fire"); colloquium. Words: "I believe that he had ſet fire to his houſe" (meaning that ſaid plaintiff did feloniously, &c.): Like 16th Count. inducement to a colloquium with one Edward Rowley, then and there being the ſurveyor of ſaid ſociety, of and concerning, &c. as in laſt Count. Words: "Had you (meaning ſaid ſurveyor) attended at Sherwood's (meaning the houſe or office of ſaid juſtice before-mentioned, and alluding to ſaid examination of ſaid plaintiff touching and concerning ſaid ſuppoſed crime ſo as aforeſaid falſely and maliciously laid to the charge of and alledged againſt plaintiff as aforeſaid) the day the parties were ſummoned (meaning ſaid twenty-fixth of March before-mentioned) he (meaning ſaid plaintiff) would have been committed" (meaning that ſaid plaintiff had, and that ſaid E. Rowley of his own knowledge knew, and could teſtify that ſaid plaintiff had feloniously, &c. ſet fire to his ſaid meſſuage, &c.) Like inducement, and a ſimilar 17th Count. colloquium. Words: "Proſecute him (meaning plaintiff, thereby alſo inſinuating that ſaid plaintiff had feloniously, &c. ſet fire to his ſaid meſſuage or, &c.) and your evidence (meaning the knowledge, teſtimony, and evidence of ſaid E. Rowley reſpecting ſaid fire) will affect his life" (meaning the life of ſaid plaintiff); by Special damage reaſon and means, &c. which ſaid malicious proſecution of ſaid plaintiff by ſaid defendant in ſaid firſt Count mentioned, and the ſpeaking, &c. of which ſeveral falſe, &c. words hereinbefore mentioned by the ſaid defendant of and concerning ſaid plaintiff he ſaid plaintiff is not only greatly hurt and injured in his aforeſaid good name, fame, credit, and reputation, and brought into public ſcandal, infamy, and diſgrace with and amongſt all his neighbours and other good and worthy ſubjects of this realm, inſomuch that divers of thoſe neighbours and ſubjects to whom the innocence and integrity of ſaid plaintiff in the premises were unknown, have on occaſion of the ſaid premises ſuſpected, and ſtill do ſuſpect ſaid plaintiff to have been, and to be a perſon guilty of arſon, and that he feloniously ſet fire to his ſaid meſſuage or, &c. and have on that occaſion from thence hitherto wholly reſuſed, and ſtill do daily more and more reſuſe to have any commerce, acquaintance, or diſcourſe with him, or to have any thing to do with him as they were before uſed and accuſtomed to do, and would have done again had not ſaid plaintiff been ſo as aforeſaid proſecuted by ſaid defendant, and had not ſaid ſeveral words been ſo as aforeſaid ſpoken and publiſhed by ſaid defendant of and concerning him ſaid plaintiff, but alſo by reaſon and means, and on account of the premises hereinbefore mentioned, and for no other

TORT.—WORDS OF ADULTERY.

reason, by no other means, and on no other account whatsoever, the said society have hitherto refused, and still do refuse to pay to the said plaintiff his said insurance, damage, or loss of, &c. which he said plaintiff had and has so as aforesaid sustained and suffered by the means and on account of said fire, and against which he was so as aforesaid insured by said society, or any part thereof, and the same and every part thereof on occasion and by means, and on account of the premises aforesaid, remain due, owing, and unpaid to said plaintiff; and the said plaintiff, by and on account of said premises, and on no other account whatsoever, has been hindered, prevented, and deprived, &c. from receiving the same, or any part thereof, and is in great danger of wholly losing the same; and said plaintiff, by means of the premises, was and hath been forced and obliged to suffer and undergo, and did suffer, &c. and hath suffered, &c. many great and arduous labours and troubles both of body and mind, and to lay out and expend, and hath necessarily laid out and expended a large sum of money, to wit, the sum of fifty pounds, and said plaintiff is also, by means of the premises aforesaid, otherwise greatly injured and damaged, very much impoverished, and almost wholly ruined, to wit, at, &c. aforesaid; wherefore, &c. Damages two thousand pounds. Suit, &c. [Defendant pleaded the general issue.]

This Cause came on to be tried, but the plaintiff could not prove the special damages; and as several very suspicious circumstances appeared against him, the chief justice recommended the withdrawing a juror.

Declaration at the suit of husband and wife, for words of adultery spoken of plaintiff's wife, and slander.

BEDFORDSHIRE, to wit. T. S. and S. his wife complain of L. W. and S. his wife being in the custody, &c. of a plea of trespass on the case; for that whereas said S. S. now is a good, pious, chaste, virtuous, and honest subject, and hath always for all her lifetime past hitherto behaved and governed herself, and until the speaking and publishing of the several false, scandalous, and defamatory words hereafter specified, and the reporting and publishing of the several slanders hereafter mentioned by said Sarah W. of and concerning said Sarah S. was always reputed, esteemed, and accepted amongst all her neighbours and divers other worthy subjects of this realm, to be a person of good name, fame, credit, and reputation, to wit, at B. in said county of B. and that she the said S. S. hath not ever been guilty, or until the time of the speaking and publishing, &c. been suspected to have been guilty of any adultery, fornication, or whoredom, or of any other such hurtful crime; by means of which said premises she the said S. S. before the speaking, &c. of the said false, &c. words, &c. and of the reporting, &c. of the several slanders hereafter mentioned by said S. W. of and concerning said S. S. had deservedly obtained and secured to herself the benevolence, good opinion, and credit of all her neighbours, and also of divers other good and worthy subjects of this kingdom to whom she was known, to wit, at

at Bedford aforesaid; and the said T. S. and S. his wife, before the speaking and publishing of, &c. were used to live peaceably and quietly together, and to enjoy great happiness in their married state; yet said S. W. well knowing all and singular the premises aforesaid, but contriving, &c. to prejudice, degrade, and injure said S. S. in her aforesaid good name, &c. and to cause said S. S. to be brought into public scandal and disgrace, and to cause her to be esteemed and suspected to be a person guilty of adultery, and to disturb the repose and quiet of said S. S. in her family, and to render her suspected to her husband, and to make said T. S. uneasy with and jealous of said S. S. on the day of

A. D. at, &c. aforesaid, in a certain discourse which said S. W. then and there had with divers good and worthy subjects, &c. of and concerning said S. S. she the said S. W. then and there falsely, &c. said, &c. of and concerning said S. S. in the presence and hearing of those subjects, these false, &c. words, to wit, "I (meaning herself said S. W.) caught her (meaning said S. S.) lying with Getup (meaning one, &c. and also meaning that said S. S. was in the act of carnal copulation with said, &c.) in the necessary house belonging to the house of said T. S. in Bedford aforesaid," &c. &c.: And afterwards, to wit, on same day and year aforesaid, at, &c. aforesaid, in a certain other discourse which said S. W. then and there had with divers other good and worthy subjects, &c. of and concerning said S. S. she the said S. W. of her further malice against the said S. S. contriving, &c. as aforesaid, then and there falsely and maliciously published, reported, and declared of and concerning said S. S. in the presence and hearing of the said last-mentioned subjects, the following false slander, that is to say, "That she the said S. W. had caught the said S. S. lying (meaning in the act of carnal copulation) with one James Getup, in a necessary house in B. aforesaid;" by reason and means of the speaking and publishing of the several slanders aforesaid by her the said S. W. of and concerning said S. S. she the said S. S. is greatly prejudiced degraded, and injured in her good name, &c. and is brought into public scandal and disgrace amongst all her neighbours, and divers other good and worthy subjects of this kingdom, and by means of the premises aforesaid, divers good and worthy subjects of this kingdom to whom the innocence and integrity of said S. S. in the premises were unknown, have, on occasion of the speaking, &c. of said several words, and of the reporting of, &c. of said several slanders from thence hitherto wholly refused, and still do daily more and more refuse to have any commerce, acquaintance, or discourse with her, or to have any thing to do with her, as they were before accustomed to do, and would have done again had not those words been spoken, or those slanders published, and by means thereof divers uneasinesses have arisen between the said T. S. and S. his wife, and said T. S. hath been jealous of her, and hath been very much displeased with her, and hath refused to let her associate herself with him, or have any thing to do with him and her repose in her family

hath by means thereof been greatly disturbed, and the said S. S. hath been greatly injured and damnified in many other respects to said plaintiff, their damages of one hundred pounds; and therefore they bring their suit, &c. Pledges, &c.

Declaration for words spoken of a surveyor, and degrading him in his business.

LONDON, to wit. W. T. complains of R. W. being, &c.; for that whereas said plaintiff now is a good, true, honest, just, and faithful subject of this kingdom, and as such a good, true, &c. from the time of his nativity hitherto hath always behaved, &c. and has for all the time aforesaid until the time of the speaking, &c. of the several false, &c. words hereafter mentioned, been held, &c. amongst all his neighbours and other, &c. to be a man of good name, &c. and has never been guilty, nor until the time of the speaking, &c. hereafter mentioned, been suspected of having been guilty of any kind of felony, larceny, robbery, trickery, roguery, cheating, deceit, fraud, or falsehood, or any other such hurtful crime; And whereas said plaintiff, at the several times of the speaking, &c. was, and for divers years then last past had been, and ever since hath been, and still is a surveyor, and the art or business of a surveyor hath used, exercised, followed, and carried on, and still uses, &c. with great skill, knowledge, candour, and fidelity; by means of which said premises said plaintiff, before the speaking and publishing, &c. had deservedly obtained and acquired to himself the good opinion and credit of all his neighbours and other good, &c. subjects to whom he was known, and also daily acquired sundry great gains and profits in his aforesaid business, to the very comfortable support of himself and his family, and to the very great increase of his riches, to wit, at, &c. aforesaid; yet said defendant, well knowing all and singular the premises aforesaid, but contriving and maliciously intending wrongfully and unjustly to prejudice, degrade, and injure said plaintiff in his aforesaid good name, fame, &c. &c. and in his business aforesaid, and to cause him to be esteemed and reputed a thief and a robber, and also to cause him to be esteemed a person not understanding his said business of a surveyor, and to bring him into public scandal, ignominy, and disgrace among all his neighbours and other good, &c. subject, to whom he was known, and to subject him to the pains and penalties by the laws and statutes of this realm made and provided against those who commit any kind of theft, robbery, or fraud, on day of , A. D. 1775, at L. &c. in a certain discourse which said defendant then and there had with said plaintiff, in the presence and hearing of divers good, &c. subjects of, &c. of and concerning said plaintiff in his aforesaid business, and otherwise, he said defendant then and there falsely and maliciously said, &c. these false, &c. words following, of and concerning said plaintiff in his business aforesaid, and otherwise and in the presence and hearing of those subjects, that is to say, "Damn you, (meaning said plaintiff) you (again meaning said plaintiff) are a rascal, you (again meaning said plaintiff) are no surveyor meaning

(meaning that plaintiff did not understand his said business of a surveyor), and you (again meaning said plaintiff) are a villain; damn you, (again meaning said plaintiff), you (again meaning said plaintiff) have robbed me" (meaning himself said defendant).

Words: "Damn you, you are a rascal, you are no surveyor." 2d Count.

Words: "You are a rascal, you are a villain; damn you, you are no surveyor:" by means of the speaking, &c. of which said several false, &c. words, said plaintiff is very much injured, prejudiced, and damnified in his aforesaid good name, &c. and in his business aforesaid and otherwise, and is brought into public scandal, ignominy, and disgrace amongst all his neighbours and other good and worthy subjects of this realm, and is greatly hurt in his business of a surveyor, insomuch that divers persons who used to employ said plaintiff in his said business of a surveyor, have ever since, by reason of the said speaking, &c. of said several false, &c. words, refused to employ him said plaintiff in his aforesaid business of a surveyor, as supposing him said plaintiff not to understand said business of a surveyor, *and very many of those subjects* to whom the innocence and integrity of plaintiff in the premises were unknown, have always from the time of the speaking, &c. said words so vehemently suspected said plaintiff to have been and to be a thief, and a person guilty of robbery, that they have on that account always from thence hitherto wholly refused, and still do daily more and more and more refuse to have any commerce, acquaintance, or discourse with him, or to have any thing to do with him as before they were accustomed to do, and would have done again had not these words been spoken, to wit, at L. aforesaid. Damages five hundred pounds. Suit, &c. Pledges, &c.

THAT whereas said Lawrence Snorum now is a good, true, honest, just, and faithful subject of this kingdom, and as such a good, true, honest, just, and faithful subject from the time of his nativity, hitherto hath always behaved, had, and governed himself, and hath always hitherto been held, esteemed, and reputed as such amongst all his neighbours and all other persons to whom he was any ways known, and has never yet been guilty, nor until the speaking, &c. of the several false, &c. words hereafter mentioned, been suspected to have been guilty of any kind of perjury or subornation of perjury, knavery, trickery, cheating, deceit, or falsehood, or any other such hurtful crime; by means of which said premises said plaintiff, before the speaking, &c. of said several false, &c. words hereinafter mentioned to have been spoken, &c. by said Dorothy, the wife of said John Dirty, to of and concerning said plaintiff, had deservedly obtained and got to himself the benevolence, good opinion, and credit of all his neighbours and other good and worthy subjects of this realm to whom he was known, to wit, at W. in said county of Middlesex: And whereas the said plaintiff, at the time of the speaking, &c. of the several false, &c. words hereafter mentioned, was, and long before had been,

Declaration for words spoken of an attorney, i. e. perjury on the taxation of costs and dishonesty in his profession.

been, and from thence hitherto hath been and still is one of the attornies of the court of our lord the now king, before the king himself, *of the bench here, to wit, at Westminster, in said county of Middlesex*, and in the office, practice, and business of an attorney at law, has been during all that time retained and employed by divers good and worthy subjects of this realm to prosecute and defend for them, and as their attorney, agent and solicitor, divers suits and businesses in this court here, and other his majesty's courts of record at Westminster and elsewhere, to do and negotiate divers other affairs and businesses for them respectively, and the said plaintiff hath, during all that time, transacted and carried on all such causes, suits, and businesses as have ever been committed to his care, and hath always behaved himself in the profession of an attorney with judgment, integrity, care, and reputation, without committing, or until the speaking and publishing the several false, &c. words hereinafter mentioned, suspected of having committed any kind of trickery, knavery, roguery, dishonesty, or perjury, or any other such hurtful crime, to wit, at W. aforesaid, and by means of said last-mentioned premises said plaintiff hath, during all that time got and acquired to himself deservedly large sums of money in his aforesaid business, to the comfortable support of himself and his family, and to the great increase of his riches, to wit, at W. aforesaid: And whereas said plaintiff, before the speaking, &c. of the several false, &c. words hereinafter mentioned, had been and was in his said business employed by one Anne Lead to commence and prosecute a certain suit or action at law in a plea of breach of covenant in this court here, wherein said Ann Lead, as administratrix of all and singular the goods, chattels, and credits which were of Richard Lead, deceased, who died intestate, was plaintiff, and the said J. D. was defendant, and said plaintiff, in the prosecuting, carrying on, and conducting the said cause or suit, behaved himself with great integrity and honesty, to wit, at, &c. aforesaid: And whereas said plaintiff, before the speaking and publishing of the said several false, &c. words hereafter mentioned, to wit, on the third of February 1776, went before one Anthony Dickens, esquire, then and still being one of the prothonotaries of this court here, in order to tax the costs in the aforesaid cause or suit, and did then and there tax the costs in the aforesaid cause or suit, and said plaintiff, on the said taxation, then and there behaved himself with great truth, integrity, and honesty, and without committing of perjury, to wit, at W. aforesaid: And whereas the said costs were taxed at a certain sum of money, to wit, the sum of six pounds ten shillings, and were afterwards, and before the speaking, &c. of the false, &c. words hereafter mentioned, to wit, on said third of February 1776, paid by said J. D. to said plaintiff, to wit, at W. aforesaid; yet the said Dorothy, the wife of said J. D. well knowing all and singular the premises aforesaid, but greatly envying the happy state and condition of the said plaintiff, and contriving and maliciously intending to hurt, injure, and prejudice the said plaintiff in his aforesaid

aforesaid good name, and in his business aforesaid, and to cause him to be esteemed and reputed a dishonest man, and to have been guilty of perjury, and endeavouring as much as in her lay, to ruin him said plaintiff in his credit and reputation therein, and to bring him into public hatred, scandal, ignominy, and disgrace, and to subject him to the pains and penalties by the laws and statutes of this realm made and provided against those who are guilty of cheating, or who commit perjury, on the fourteenth of February A. D. 1776, to wit, at W. aforesaid, in a certain discourse which said Dorothy, the wife of said J. D. then and there had with divers good and worthy subjects of this realm of and concerning said plaintiff in his aforesaid business, of and concerning the aforesaid costs, the said Dorothy then and there, in the presence and hearing of those subjects, falsely, &c. said, &c. of and concerning said plaintiff, to wit, in his business aforesaid, these false, &c. words following, that is to say, "It was nothing more than a trick upon us (meaning said J. D. her husband, and herself said D. and meaning said plaintiff had tricked said J. D. out of the said costs), for Snorum (meaning said plaintiff) forswore himself" (meaning said plaintiff had committed wilful and corrupt perjury); and the said plaintiff, who was then and there present, then and there expostulated with the said defendants on the charge aforesaid so by her made, the said defendants then and there falsely, &c. said in answer to such expostulation, and loudly published the false, &c. words following, of and concerning said plaintiff, in the presence and hearing of those subjects, that is to say, "It is nothing but the truth what I have before said" (meaning thereby that said plaintiff had actually committed perjury before the prothonotary): And afterwards, &c. [as before, as the nature of the case may require]; by means of the speaking, &c. of the several false, &c. words, he said plaintiff is very much hurt, injured, and damnified in his aforesaid good name, fame, &c. and in his business aforesaid, and is brought into public scandal, ignominy, and disgrace amongst his neighbours and other good and worthy subjects of this realm, insomuch that those neighbours and subjects, divers of whom were used and accustomed to retain and employ him said plaintiff in his business, and to whom the innocence and integrity of said plaintiff in the premises were unknown, have always from the time of the speaking, &c. of said several false, &c. words, hitherto so vehemently suspected plaintiff to have been and to be a person guilty of trickery, cheating, dishonesty, and of perjury in his business aforesaid, that they have on that account wholly desisted from employing him said plaintiff in his business aforesaid, to have any commerce, acquaintance, or discourse with him, or to have any thing to do with him as before they were used and accustomed to do and would have done again had not those words been spoken, to wit, at W. aforesaid; wherefore said plaintiff saith that he is injured, and hath sustained damage to

the value of five hundred pounds, and therefore he brings his suit, &c. Pledges, &c.

The plaintiff in the above cause obtained a verdict and forty pounds damages.

Easter Term, 17. Geo. III.

Declaration for words of perjury in an affidavit made by plaintiff relative to defendant, who had given notice of his becoming bail for a woman who stood indicted for a fraud.

LONDON, to wit. Thomas Bandy complains of John Whipup the elder, being, &c. of a plea of trespass on the case; for that whereas said plaintiff now is a good, true, honest, just, and faithful subject of this kingdom, and as such a good, &c. from the time of his nativity hath always hitherto behaved, had, and governed himself, and hath always until the speaking, &c. of the false, &c. words hereafter mentioned, been said, held, and esteemed as such amongst all his neighbours and all other persons to whom he was in any wise known, and has never yet been guilty, nor until the time of the speaking, &c. of the several false, &c. words hereafter mentioned to have been spoken and published by said defendant of and concerning said plaintiff, been suspected to have been guilty of perjury, subornation of perjury, or of any other such hurtful crime, by reason of which said premises he said plaintiff, before the speaking, &c. of the several false, &c. words hereafter mentioned, had deservedly obtained and procured to himself the benevolence, good opinion, and credit of all persons to whom he was known, to wit, at London aforesaid: And whereas one E. N. before and at the time of the speaking, &c. of the said false, &c. words hereafter mentioned, stood indicted for a certain offence or misdemeanor, to wit, for obtaining from E. C. certain goods and chattels under false pretences, contrary to the form of the statute in such case made and provided, and the said E. N. was then in custody for such offence or misdemeanor, but was endeavouring to procure her release and discharge from her imprisonment, by giving bail to appear at the then next session of the peace to be holden in and for the city and liberty of Westminster, in the county of Middlesex, that is to say, for the purpose of trying her traverse to the said indictment, she having before then pleaded thereto not guilty, and for that purpose had, before the speaking, &c. of the words hereafter mentioned, given notice of bail to the solicitor for the prosecution of the said indictment for such her appearance, and had in such notice named the said J. W. and certain others as persons that would attend before the right honourable William, lord Mansfield (then and still chief justice of our lord the king assigned to hold pleas in the court of our lord the king, before the king himself, and then having power, if he thought proper, to admit the said Eleanor to bail) at Guildhall, in the city of London, on the twentieth day of February A. D. 1777: And whereas said plaintiff had, before the speaking, &c. of the words hereafter mentioned, made enquiries into the character of said defendant, and the other persons named in such notice of bail, and had, on the twenty-fourth of February 1777, made

made an affidavit before sir Richard Aston, knight, one of the justices of our lord the king assigned to hold pleas in the said pleas of our lord the king, before the king himself, he the said sir R. Aston having a sufficient authority to administer an oath to said plaintiff in that behalf, as to and concerning the result of such enquiries relative to the sufficiency of the said defendant and the said other persons to become bail on the occasion aforesaid, and in such affidavit had deposed to the truth and nothing but the truth, to wit, at L. &c. aforesaid; yet said defendant, well knowing the premises, but greatly envying the happy state and condition of said plaintiff, and contriving, &c. wrongfully and unjustly to hurt, prejudice, and injure the said plaintiff in his aforesaid good name; &c. and to bring him into public scandal, ignominy, and disgrace, and to cause him to be esteemed and reputed amongst his neighbours and other worthy subjects of this realm to be a man guilty of perjury, and to cause him to undergo and suffer the pains and penalties by the laws and statutes of this realm made and provided against persons guilty of perjury after the making of such affidavit, to wit, on said first day of March in A. D. 1777, at London, &c. aforesaid, in a certain discourse which he said defendant then and there had with said plaintiff of and concerning him said plaintiff, in the presence and hearing of divers good and worthy subjects of this realm, and of and concerning the aforesaid affidavit, he said defendant then and there falsely, &c. said, &c. these false, &c. words following to, of, and concerning said plaintiff, in the presence and hearing of those subjects, that is to say, "You (meaning said plaintiff) are perjured; (meaning that plaintiff had been guilty of wilful and corrupt perjury in his aforesaid affidavit) and I'll (meaning that he said defendant would) prove you (meaning said plaintiff) perjured, and you (again meaning said plaintiff) are a perjured villain" (meaning that said plaintiff had been guilty of perjury in his affidavit aforesaid). [There were a variety of other Counts on similar words]; by means of the speaking, &c. of which said several false, &c. words aforesaid, he said plaintiff is greatly hurt, prejudiced, and damnified in his aforesaid good name, &c. and is brought into public scandal, ignominy, and disgrace amongst all his neighbours, friends, and acquaintance, inasmuch that divers of those neighbours, friends, and acquaintance to whom the innocence and integrity of said plaintiff in the premises were unknown, have, from the time of the speaking of those words, hitherto so vehemently suspected the said plaintiff to have been guilty of perjury; that they have on that account wholly refused, and still do daily more and more refuse to have any commerce, acquaintance, or discourse with him, as they otherwise would have done had not those words been spoken and published, and said plaintiff is, on occasion of the premises, otherwise greatly injured, to wit, at L. &c. aforesaid, to the damage of the said plaintiff of one hundred pounds, for which he brings suit, &c. Pledges, &c.

J. MORGAN.

LONDON,

Mich. Term, 17. Geo. III.

Plea of not guilty, and special justification in an action for defamation of title by advertisement, and a confirmation of facts.

AND the said Thomas, in his own proper person, comes and defends the wrong and injury, when, &c. and says, that he is not guilty of the premises aforeaid in manner and form as the said William and James have above thereof complained against him; and of this he puts himself upon the country, &c. : And for further plea as to the printing and publishing, and causing to be printed and published in the said newspaper in the first count of the said declaration mentioned the advertisement in that count mentioned above supposed to have been done by the said defendant, he the said defendant, by leave of the court, &c. according to the form of the statute, &c. says that the said plaintiffs ought not to have or maintain their aforeaid action thereof against him, because he says that before the printing and publishing the said advertisement by him the said defendant, the said manor, farm, and premises in the said advertisement in the said first count of the said declaration mentioned were settled upon Mrs. W. widow of R. W. W. esquire, deceased, as her jointure, to wit, by virtue of certain indentures of lease and release, made and bearing date, to wit, the said indenture of lease the twenty-sixth day of July 1769, and the said release the twenty-seventh day of July 1769, between the said R. W. W. of the one part, and P. N. F. and P. F. of the other part, which said indentures of lease and release he the said defendant now brings into court here respectively sealed with the seal of the said R. W. W. : And the said defendant further saith, that the said R. W. W. being seised thereof in fee, afterwards and before the printing and publishing the said advertisement, to wit, on the third day of November, A. D. 1773, at, &c. aforeaid, by his last will and testament by him duly executed, and which he the said defendant now brings into court here, demised the same to the said Mrs. W. and to her heirs for ever : And afterwards, to wit, on the day of 177. , to wit, at L. aforeaid, died without revoking or altering his said will with respect to the said devise, as by the said will reference being thereunto had will appear, to wit, at L. aforeaid : And the said defendant further saith, that before and at the time of the printing and publishing of the said advertisement, a bill was depending in his majesty's high court of chancery against the heirs at law of the said R. W. W. in order to establish the said bill, to wit, at L. &c. aforeaid, for which reason he the said defendant did print and publish, and cause to be printed and published the said advertisement, as it was lawful for him to do for the cause aforeaid ; and this the said defendant is ready to verify ; wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforeaid action against him, &c. : And for further plea as to the printing and publishing, and causing to be printed and published the advertisement in the said newspaper in the said last count of the said declaration mentioned, &c. [A like plea to this count as to the first.]

J. MORGAN.

WILLIAM

LEICESTER, to wit. F. T. W. the said plaintiff, For words spoken of plaintiff, that he had been guilty of forgery, and that money had been given to prevent his being prosecuted for it. now is a good, true, honest, and faithful subject of this realm, and as such from his nativity hitherto hath always behaved and governed himself, and hath always, until the speaking and publishing of the several ~~false~~ scandalous, malicious, and defamatory words hereafter mentioned to have been spoken and published by the said defendant to, of, or concerning the said plaintiff, been esteemed and reported to be a person of good name, fame, credit, and reputation, and hath never been guilty, nor until the speaking and publishing of the several false, feigned, scandalous, opprobrious, and malicious words hereafter mentioned been suspected to have been guilty of forgery, or of any such crime or offence; yet the said defendant, well knowing the premises, but contriving and maliciously intending not only to hurt, injure, and prejudice the said plaintiff in his aforesaid good name, fame, credit, and reputation, and to bring him into public hatred, scandal, and disgrace, but to subject him also to the pains and penalties by the laws and statutes of this realm made and provided against those who commit forgery, heretofore, to wit, on, &c. at, &c. in a certain discourse which he the said defendant then and there had with the said plaintiff, in the presence and hearing of divers good and worthy subjects of this realm, of and concerning the said plaintiff, he the said defendant then and there falsely and maliciously said, rehearsed, proclaimed, and loudly published these false, feigned, scandalous, opprobrious, and malicious English words following to and of him the said plaintiff, in the presence and hearing of those subjects, that is to say, "You (meaning him the said plaintiff) have been guilty of forgery, and your aunt Mary Pad paid either one hundred pounds or two hundred pounds to make it up" (thereby meaning and insinuating that the said plaintiff had been guilty of the indictable offence of forgery, and that money had been given to prevent his being prosecuted for such offence).

2d Count. Colloquium as follows. "You William Sulky (meaning him the said plaintiff) have been guilty of forgery, and your aunt Mary Pad paid either one hundred pounds or two hundred pounds to make it up."

3d Count. Colloquium as follows. "You (meaning, &c.) have been guilty of forgery; you (meaning &c.) forged a bill, and it cost your aunt either one hundred pounds or two hundred pounds to save you (meaning, &c.) from the gallows" (thereby meaning and insinuating that the said plaintiff had before then committed and been guilty of a forgery, for which he was liable to be indicted capitally, and that money had been given to prevent his being so prosecuted).

4th Count. Colloquium as follows. "You (meaning, &c.) have been guilty of forgery, and had it not been for your aunt you (meaning, &c.) would have been hanged for it" (meaning for the said forgery so insinuated to have been committed by the said plaintiff as last aforesaid).

5th Count. Colloquium as follows. "You (meaning, &c.) have been guilty of forgery."

6th Count. Colloquium as follows. "He (meaning

(meaning the said plaintiff) has been guilty of forgery." The conclusion then follows. By means of the speaking and publishing of which said several false, feigned, scandalous, opprobrious, and malicious words the said plaintiff was and is greatly hurt, prejudiced, and injured in his aforesaid good name, fame, credit, and reputation, and is fallen into great hatred, scandal, ignominy, and disgrace amongst his neighbours and other good and worthy subjects of this realm, insomuch that divers of those neighbours and subjects, to whom the innocence of the said plaintiff in the premises was unknown, have always, from the time of the speaking and publishing of the said several words hitherto so vehemently suspected the said plaintiff to have been and to be guilty of forgery, that they on that account have always since refused, and still do refuse to have any intercourse or dealings with him as before they were used and accustomed, and would have done again had not those words been spoken; to the damage of the said plaintiff of one thousand pounds.

V. LAWES.

Declaration for raising a report that the plaintiff had murdered the defendant's child.

FOR that whereas the said plaintiff now is a good, pious, tender, humane, and honest subject of this kingdom, and as such hath always hitherto behaved and governed himself, and until the speaking and publishing of the several false, feigned, scandalous, and malicious words hereinafter mentioned to have been spoken and published by the said defendant of and concerning the said plaintiff was always esteemed and reputed to be a person of good name, fame, credit, and reputation, and hath never been guilty, nor until the speaking and publishing of the several false and scandalous words hereafter mentioned been suspected to have been guilty of the horrid crime of murder, or of any other such crime: And whereas before the speaking and publishing of the several false, &c. words hereafter mentioned a certain infant child of the said defendant died by the visitation of Providence, and through disease and sickness, and not by any assault or violence by the said plaintiff, to wit, at, &c; yet the said defendant, well knowing the premises, but contriving and maliciously intending to defame and injure the said plaintiff, and to cause her to be brought into public scandal and disgrace, and to cause him to be esteemed and suspected to be a person guilty of the horrid crime of murder, heretofore, to wit, on, &c. in a certain discourse which the said defendant then and there had with divers good and worthy subjects of this realm of and concerning the said plaintiff, and of and concerning the said infant child of him the said defendant and the cause of its death, he the said defendant then and there, in the presence and hearing of those subjects, falsely and maliciously said, rehearsed, proclaimed, and loudly published these false, feigned, scandalous, malicious, and opprobrious words following of and concerning the said plaintiff, and the death and the cause of the death of the aforesaid child of the aforesaid defendant, that is to say, "She (meaning the said plaintiff) murdered my child".

(meaning

(meaning the said infant child of the said defendant which had so died as aforesaid, and also meaning that the said plaintiff had murdered the said child:) And also afterwards, &c. &c. &c.: By means of the speaking and publishing of which said several false, &c. words of and concerning the said plaintiff, she the said plaintiff is greatly injured and hurt in her aforesaid good name, &c. and is brought into public scandal and disgrace amongst all her neighbours and divers other worthy subjects of this kingdom; and she hath also been suspected of having been guilty of the horrid crime of murder, and divers good and worthy subjects of this kingdom, to whom the innocence of the said plaintiff in the premises was unknown, have on occasion of the speaking and publishing of the said several words from thence hitherto wholly refused, and still do daily more and more refuse to have any more commerce, acquaintance, or discourse with her, or to have any thing to do with her as they were before accustomed to do and would have done again had not those words been spoken; to the damage of the said plaintiff of two thousand pounds; and therefore she brings her suit, &c. &c. &c.

V. LAWES.

FOR that whereas the said plaintiff now is a good, true, honest, and faithful subject of this kingdom, and as such good, &c. from the time of her nativity hitherto, hath always behaved, had, and governed herself, and hath always been esteemed and reputed amongst all her neighbours and other good and worthy subjects of this realm to whom she was known to be a woman of good name, fame, credit, and reputation, and hath always hitherto lived free, untouched, unspotted, and wholly unsuspected of and from all and all manner of perjury, knavery, trickery, deceit, or falsehood, or any other such hurtful crime; by means whereof the said plaintiff, before the speaking and publishing of the several false, feigned, scandalous, opprobrious, and malicious English words hereafter mentioned, had deservedly obtained and acquired to herself the benevolence, good opinion, and credit of all persons any ways acquainted with her, and of divers other good and worthy subjects of this realm; yet the said defendant, well knowing the premises, but contriving and maliciously, &c. the said plaintiff in her aforesaid good name, &c. and wholly to destroy the same, and to bring her into public hatred, scandal, ignominy, and disgrace, and to subject her to the pains and penalties by the laws and statutes of this realm made and provided against those who commit perjury, on, &c. at, &c. in a certain discourse which the said defendant then and there had with divers good and worthy subjects of this realm of and concerning the said plaintiff, he the said defendant then and there falsely and maliciously said, rehearsed, proclaimed, and loudly published these false, &c. words following of the said plaintiff in the presence and hearing of those subjects, that is to say, "She (meaning the said plaintiff) is perjured, and hath forsworn herself; and I (meaning himself the said defendant) will

Accusing plaintiff of perjury.

have her head (meaning the head of the plaintiff) in the pillory: And afterwards, to wit, on, &c. at, &c. in a certain other discourse which the said defendant then and there had with divers other good and worthy subjects of this realm of and concerning the said plaintiff, he the said defendant then and there falsely, &c. &c. these other false, &c. &c. following of the said plaintiff, in the presence and hearing of those last-mentioned subjects; that is to say, "She (meaning the said plaintiff) is perjured, and hath forsworn herself:" And afterwards, &c. 3d Count, these words, "She is perjured." 4th Count, these words; "God damn her (meaning, &c.) for a bitch, I (meaning, &c.) will have her head (meaning, &c.) in the pillory, (meaning a certain pillory, &c.) for she (meaning, &c.) is a perjured bitch, and I (meaning, &c.) will try her (meaning, &c.) at the assizes for perjury;" by means of the speaking and publishing of which said several false, &c. words the said plaintiff is greatly hurt, prejudiced, and injured in her aforesaid good name, &c. and is fallen into great hatred, &c. amongst her aforesaid neighbours and other good and worthy subjects of this realm, insomuch that divers of those subjects, to whom the innocence and integrity of the said plaintiff in the premises were unknown, have always, from the time of the speaking and publishing of the said several, &c. words, hitherto vehemently suspected the said plaintiff to be guilty of perjury, that they on that occasion hath always since hitherto refused, and still do refuse more and more to have any conversation with her, or to have any thing to do with her, as before they were used and accustomed, and would have done again had not these words been spoken; to, &c.; damages, &c.

Drawn by MR. WARREN.

Hilary Term, 26 Geo. III.

Declaration in
B. R. against
defendant for
accusing plain-
tiff of ar-
son, and also
saying that he
kept a lady,
whereby plain-
tiff, who was
going to be
married, lost his
marriage.

MIDDLESEX, to wit. John Pounce complains of Thomas Saucy being, &c.; for that whereas the said John now is a good, true, honest, just, and faithful subject of this realm, and as such hath always behaved and governed himself, and until the speaking and publishing of the several false, scandalous, malicious, and defamatory words hereafter mentioned to have been spoken and published by the said Thomas of and concerning the said John was always reputed, esteemed, and accepted amongst all his neighbours and other good and worthy subjects of this realm to be a person of good name, fame, and credit, and hath never been guilty, nor until the speaking and publishing of the said several false, scandalous, malicious, and defamatory words hereinafter mentioned been suspected to have been guilty of arson, setting fire to, or burning of any dwelling or other house, or outhouse, or of any such crime or offence: And whereas the said John, before the speaking and publishing of the said several false, &c. hereafter mentioned, had dwelt and resided in a certain messuage or dwelling-house situate at, &c. in, &c. which said messuage or dwelling-house, together with certain *household goods and other property* of the said John therein being, had been, and was, before

before the speaking and publishing of the said several false, &c. hereafter mentioned, burnt and consumed by fire, but such fire did not happen by design or purposely; nor did he the said John in any manner cause the same, but the same was merely accidental and by misfortune, to wit, at, &c.: And whereas the said John, before and at the time of the speaking and publishing of the said several false, &c. hereinafter mentioned, had paid, and was paying his addresses to one E. S. a person of considerable property and fortune, in the way of courtship, and with a view to contract matrimony with her, and no objection or prejudice had been excited or taken against him, either in respect of character, connections, disposition, or behaviour, but on the contrary his said addresses had been received, and a marriage was near being, and likely to have been concluded between him the said John and the said E. S. whereby the said John would have been preferred to a much more wealthy, happy, and agreeable state and condition of life, to wit, at, &c.: Nevertheless the said Thomas well knowing all and singular the premises aforesaid, but contriving and maliciously intending to hurt, prejudice, and degrade him the said John in his aforesaid good name, fame, credit, and reputation, and to excite unfavourable prejudices in the mind of the said E. S. against the said John, and to hinder and prevent the said intended marriage between them from taking effect, heretofore, to wit, on, &c. at, &c. in a certain discourse which the said Thomas then and there had with the said E. S. of and concerning the said John and the aforesaid fire, and his connections, he the said Thomas then and there falsely and maliciously said, rehearsed, spoke, and published to the said E. S. these false, &c. words following of and concerning the said John and the aforesaid fire, and his connections in life, that is to say, "I (meaning himself the said Thomas) have been told that he (meaning the said John) set his house on fire (thereby alluding to the fire heretofore mentioned, and also meaning and insinuating that the said John had occasioned such fire, and been guilty of arson in setting fire to his said house); that he (meaning again the said John) has a bastard child, the expences of which he (meaning again the said John) could not pay till he (meaning again the said John) got the money from the insurance office (thereby meaning and insinuating that he the said John had been insured against such damage as aforesaid by the aforesaid fire, and that such damages had been reimbursed and made good to him under such insurance); and that he (meaning again the said John) keeps a lady" (thereby meaning and insinuating that the said John lived and cohabited with a kept mistress, and that his manner of living and his connections in life were of a loose, immodest, and improper nature, and that he was himself a dissipated character, and an unfit and improper person for the said E. S. to marry or take to husband): Whereas in truth and in fact the said Thomas, at the time of his speaking and publishing the said words so by him spoken as aforesaid, had not been told or informed of the said several circumstances so by him as-

2d Count.

serted of and concerning the said John as aforesaid, or of any or either of them: And afterwards, to wit, on, &c. at, &c. in a certain other discourse which the said Thomas then and there had with the said E. S. of and concerning the said John and the aforesaid fire, he the said Thomas then and there falsely, &c. said, &c. these other false, &c. words following of and concerning the said John and the aforesaid fire, that is to say, "I, &c. &c. &c." [as before in 1st Count, only leaving out what relates to having a child., and his keeping a lady]: Whereas in truth and in fact

3d Count.

the said Thomas, at the time of his so speaking and publishing the said words so by him spoken as last aforesaid, had not been told that the said John set his house on fire: And afterwards, to wit, on, &c. at, &c. in a certain other discourse which the said Thomas then and there had with the said E. S. of and concerning the said John and his connections, character, and circumstances, he the said Thomas then and there falsely, &c. &c. [as the 2d Count, only instead of mentioning his setting his house on fire insert in lieu thereof that he had a bastard child, and kept a lady, &c.]: Whereas in truth and in fact the said Thomas, at the time of his so speaking and publishing the said words so by him spoken as last aforesaid had not been told that the said John had a bastard child, nor were his fortune and circumstances incumbered in the way insinuated by the said Thomas: And afterwards, to wit, on, &c. &c. [this Count like the 3d Count, only mention his keeping a lady, taking no notice of the child]:

4th Count.

5th Count.

And afterwards, to wit, on, &c. at, &c. in a certain other discourse, &c. of and concerning the said John and his circumstances, he the said Thomas then and there falsely, &c. these other false, &c. that is to say, "He (meaning the said John) has a bastard child" (thereby meaning and insinuating that the said John, and that the circumstances and fortune of the said John were incumbered by his having a bastard or illegitimate child to maintain and provide for): And afterwards, to wit, on, &c. in a certain other, &c. these other false, &c. "He (meaning, &c.) keeps a lady" (thereby meaning and insinuating the said John was a loose and dissipated character, and that his connections in life were of a dissipated, loose, immodest, and improper nature): And afterwards, to wit, on, &c. in a certain other discourse which the said Thomas then and there had with divers other good and worthy subjects of this realm of and concerning the said John and the aforesaid fire, he the said Thomas, in the presence and hearing of those subjects, falsely, &c. said, &c. these other false, &c. that is to say, "I (meaning, &c.) have been told that he (meaning, &c.) set his house on fire" (thereby alluding to the said fire hereinbefore mentioned, and also meaning and insinuating that the same was occasioned by the said John, and that he had been guilty of arson in so setting fire to and burning his said house): Whereas in truth, &c.: And afterwards, to wit, on, &c. [similar to the 7th Count, only instead of saying he set his house on fire say that he kept a lady, and had a child]: And afterwards, to wit, on, &c. [like the 7th,

6th Count.

7th Count.

8th Count.

9th Count.

only saying that he (meaning, &c.) set his house on fire (thereby again meaning and insinuating that the said John had been and was guilty of arson]: By means of the speaking of which said several false, &c. words of and concerning the said John, he the said John was not only greatly hurt, injured, and damnified in his aforesaid good name, fame, credit, and reputation, but was taken to have committed and to have been guilty of arson, and of setting fire to his aforesaid house: And the said E. S. to whom he so paid his addresses as aforesaid, and with whom he was about to contract matrimony as aforesaid, on occasion of the speaking and publishing of the said words, and of her suspicions and prejudices consequent upon the same, and on no other account whatsoever, from the time of the speaking of the said words hitherto hath declined and refused to receive the addresses of the said John, and hath altogether refused to contract matrimony with, or to marry or take him to husband, whereby he the said John hath lost and been deprived of all fortune, preferment, and advantage that would have arisen and resulted from such marriage, to wit, at, &c.; to the damage of the said John of ten thousand pounds; and therefore, &c.

V. LAWES.

LONDON, to wit. The rev. Henry Perfect complains of the Declaration in rev. J. Reeves, clerk, being, &c.; for that whereas said plaintiff now B. R. for words is a good, true, honest, just, and faithful subject of this realm, and spoken of a as such from the time of his nativity hitherto hath always behaved *clergyman*, to wit, that he was no clergyman, and governed himself, and has during all the time aforesaid till the time of the speaking and publishing of the defamatory words and where by plain- flanders hereafter mentioned been said, held, esteemed, and re- tiff lost occa- puted amongst all his neighbours and other worthy subjects of sional duty, &c. this realm to be a man of good name, fame, credit, and reputa- tion: And whereas the said plaintiff now is, and for divers years now last past hath been a clerk or clergyman of the church of England as by law established in holy orders, and during all that time hath sustained and conducted himself in the function or character of a clergyman with piety and morality, without being guilty, or until the time of the speaking, &c. of the false, mali- cious, and defamatory words and flanders hereafter mentioned to have been spoken and published concerning him been suspected of having been guilty of the least imposition, deceit, or falsehood: And whereas the said plaintiff, before and at the time of the speak- Inducement. ing, &c. of the several false, &c. hereafter mentioned, had occa- sionally officiated and exercised his function of a clerk or clergy- man in the parochial church of Westham, in the county of Essex, and elsewhere; by means of which several and respective pre- mises he the said plaintiff not only before the speaking of the false, &c. words hereinafter mentioned concerning him, deservedly ob- tained and procured to himself the benevolence and good opinion not only of the parishioners and inhabitants of the said parish of W. aforesaid in the church of which he had so as aforesaid occasionally officiated

Colloquium.

Words.

officiated and acted as clerk or clergyman, but also of all other persons with whom he was any ways acquainted, or to whom he was known, and also daily acquired sundry large sums of money for officiating and performing divine service as well in the aforesaid parish church as elsewhere, to the very comfortable support of himself and his family, and the increase of his riches, to wit, at, &c. ; yet the said defendant, well knowing all and singular the premises aforesaid, but contriving not only to injure and damnify the said plaintiff in his aforesaid good name, &c. but also to injure and degrade him in his aforesaid profession, function, or character of a clerk or clergyman, and also to cause it to be believed and suspected that the said plaintiff was not a clerk or clergyman in holy orders, but an impostor, and one who had only assumed such character, and one who was guilty of deception and falsehood, heretofore, to wit, on, &c. in a certain discourse which he the said defendant then and there had with divers good and worthy subjects of this realm, inhabitants and parishioners in and of the aforesaid parish of W. of and concerning the said plaintiff, and of and concerning his officiating and performing divine service in the said parish church of W. as aforesaid, he the said defendant then and there, in the presence and hearing of those subjects, falsely, &c. said, &c. these false, &c. words following of and concerning the said plaintiff and his officiating and performing divine service in the said parish church of W. as aforesaid; that is to say, "He (meaning the said plaintiff) is no clergyman; he (again meaning the said plaintiff) is not ordained" (meaning the said plaintiff was not, nor ever had been admitted into holy orders): [2d Count, like colloquium words, "He (meaning the said plaintiff) is an impostor, not in holy orders" (meaning and insinuating thereby that he the said plaintiff had imposed upon the parishioners and inhabitants of the aforesaid parish of W. by officiating and performing divine service in the church of the same parish as a clerk or clergyman as aforesaid, when in truth and in fact the said plaintiff was not in holy orders): 3d Count, colloquium words, "He (meaning, &c.) is no clergyman" (meaning that the said plaintiff was no clerk or clergyman, nor had ever been admitted into holy orders, and also meaning and insinuating by the false and defamatory words last mentioned that the said plaintiff had imposed on the parishioners and inhabitants of the said parish of W. by officiating and performing divine service therein as a clerk or clergyman as aforesaid); 4th Count, colloquium of and concerning plaintiff, and of and concerning his exercising the function or calling of a clerk or clergyman as aforesaid. Words: "He is an impostor and not in orders" (meaning and insinuating thereby that the said plaintiff was not a clerk or, &c. in holy orders as aforesaid, and that he had imposed on people in such character which he had assumed): 5th Count, colloquium of and concerning plaintiff, and of and concerning his professing to be and acting as a clerk or, &c. as aforesaid. Words: "He is no clergyman" (thereby meaning that the said plaintiff was not a clerk or clergyman of the church of
 England

England in holy orders as he pretended to be): And afterwards, ^{2d Count.} to wit, on, &c. at, &c. in a certain other discourse which the said defendant then and there had with divers other good and worthy subjects of this realm, parishioners and inhabitants of the said parish of W. of and concerning said plaintiff, and also of his having officiated and acted in the church of the same parish as clerk or, &c. as aforesaid, he the said defendant, of his further malice against the said plaintiff, and contriving and intending as aforesaid, then and there falsely, &c. published of and concerning the said plaintiff, and also concerning his having officiated and acted in the aforesaid parish-church of W. as a clerk or, &c. as aforesaid a certain false, &c. slander to the tenor and effect following, to wit, "That he the said plaintiff was not a clergyman, but an impostor" (meaning that he the said plaintiff was not a clerk or, &c. of the established church of England in holy orders aforesaid, but that he had assumed such character, and thereby imposed on the parishioners and inhabitants of the said parish of W.): Another Count like the last, for saying "That plaintiff was not in orders:" By means of the speaking, &c. the said plaintiff is not only injured and damnified in his aforesaid good name, &c. and also greatly prejudiced and degraded in his aforesaid profession, function, or calling of a clerk or clergyman in holy orders, not only in the aforesaid parish of W. and elsewhere, and amongst the parishioners and inhabitants thereof respectively, but the said plaintiff in fact further saith, that by means of the speaking, &c. of the aforesaid words and slanders respectively he the said plaintiff hath always, from the time of the speaking, &c. of the same, been hindered and prevented from officiating and performing divine service in the aforesaid church of W. as he was used and accustomed to do, and otherwise would have done, several of the parishioners and inhabitants of the said parish giving credit to the aforesaid assertions of the said defendant, and believing the said plaintiff is not a clerk or, &c. in holy orders as aforesaid, but an impostor, whereby the said plaintiff for and during all that time hath lost and been deprived of all benefit and advantage that would have arisen and accrued to him from continuing to officiate as clerk or, &c. in the said parish church of W. as before he was accustomed to do: And divers other good and worthy subjects of this realm, giving credit to the aforesaid false and malicious assertions of the said defendant in manner aforesaid made, have always from the making of the same hitherto suspected the plaintiff not to be a clerk or, &c. in holy orders, but to have assumed such character merely, and to be an impostor, and a person guilty of deception and falsehood, and they daily more and more refuse to have any commerce, acquaintance, or discourse with, or to have any thing to do with him: And the said plaintiff was, hath been, and still is, on occasion of the several premises aforesaid, otherwise greatly injured and damnified, to wit, at, &c.; to the said plaintiff his damage of five hundred pounds; and therefore he brings suit, &c.

V. LAWES.

HERT.

Declaration for words spoken of a justice of peace in his office, to wit, in passing the accounts of a surveyor of the highways.

HERTFORDSHIRE, to wit. For that whereas the said plaintiff, long before, and at the time of the speaking, &c. of the several false, &c. words hereafter mentioned to have been spoken and published by the said defendant to, of, and concerning the said plaintiff, was, and from thence hitherto hath been, and still is, one of the justices of our lord the king assigned to keep the peace of our said lord the king, in and for the *liberty of St. Albans, in the county of H.* and also to hear and determine divers felonies and other misdemeanors committed in the said liberty, and during all that time governed and conducted himself in his said office with justice, uprightness, and integrity, to wit, at, &c. : And whereas the said plaintiff, as such justice as aforesaid, before the speaking, &c. of the said several false, &c. words hereafter mentioned to have been spoken and published by the said defendant to, of, and concerning the said plaintiff in his said office of justice of, &c. as aforesaid, in the manner aforesaid, allowed certain accounts of one W. T. then one of the late surveyors of the highways in, of, and belonging to the aforesaid parish of, &c. and on that occasion acted with the utmost justice and honesty in his aforesaid office of a justice of peace, to wit, at, &c. ; yet the said defendant well knowing, &c. but contriving, &c. to injure the said plaintiff, so being such justice as aforesaid, and to cause it to be believed that he the said plaintiff had acted unjustly and corruptly in his said office of, &c. not only in allowing the aforesaid accounts of the said W. T. as such surveyor of the said highways of the aforesaid parish of, &c. but in other respects heretofore, to wit, on, &c. at, &c. aforesaid, at and in a certain vestry of the inhabitants of the said parish of, &c. then and there assembled for the purpose of inspecting, deliberating upon, and examining (amongst other things respecting the said parish) the accounts of the then surveyors of the said parish, when there was a charge of money paid by them the said surveyors to the said W. T. in discharge of, &c. said accounts of him the said W. T. so allowed by the said plaintiff as such justice as aforesaid, he the said defendant on the production of the aforesaid accounts of the said W. T. at and in such vestry as aforesaid, and on his being informed by the said plaintiff who was then and there present at and in such vestry, and composed a part thereof, that the said accounts of the said W. T. as such surveyor of the highways of, &c. aforesaid, were allowed by him the said plaintiff as such justice as aforesaid, then and there falsely, &c. said to plaintiff, so being such justice as aforesaid, at and in such vestry as aforesaid, and in the presence and hearing of the several other persons then and there present in, and at, and in part composing the same, these false, &c. words following, to wit, "I (meaning himself the said defendant) thought so (meaning and insinuating thereby that such accounts of the said W. T. were unfair, and that the said plaintiff had acted corruptly in his aforesaid office of justice of, &c. in allowing the same); and you (meaning the said plaintiff) did great injustice to the parish (meaning the aforesaid

aforesaid parish of E.) when you (meaning again the said plaintiff) allowed those accounts of the said W. T. as one of the surveyors of the said parish of E. as aforesaid, and what no other justice would have done (meaning and insinuating thereby that the said plaintiff in the allowance of the aforesaid accounts of the said W. T. acted corruptly and against the duty of his said office of, &c. as aforesaid); and you (again meaning the said plaintiff) would sign or allow any thing, just or unjust" (thereby meaning that the said plaintiff in the execution of his said office of, &c. had no regard to justice or equity, but acted corruptly and dishonestly): And upon the said plaintiff then and there expostulating with the said defendant upon his aforesaid false, &c. assertion respecting him the said plaintiff in his aforesaid office of, &c. as aforesaid, he the said defendant then and there, in the said vestry of the aforesaid parish of E. so holden as aforesaid, and in the presence, &c. of the several other persons then and there present, and at, and in part composing such vestry, falsely, &c. asserted and said, that "it was injustice" (thereby again meaning, &c. the said plaintiff had acted corruptly in his aforesaid office of, &c. in allowing the aforesaid accounts of the said W. T.): And the said plaintiff in fact further saith, that he afterwards, to wit, on, &c. in a certain other discourse which he the said defendant then there had with divers good, &c. of this realm of and concerning the said plaintiff in his aforesaid office of, &c. and also concerning his allowing of the aforesaid accounts of the said W. T. as one of the surveyors of the highways of, &c. as aforesaid, he the said defendant, contriving, &c. as aforesaid, falsely, &c. said, &c. of and concerning the said plaintiff in his aforesaid office, and also concerning his allowing the said accounts of the said W. T. in the presence, &c. of those last-mentioned subjects, these other false, &c. words, to wit, "He (meaning, &c.) did what no other justice would have done" (meaning, &c. thereby that the said plaintiff in the allowance of the said accounts of the said W. T. as one of the surveyors of the highways of the aforesaid parish of E. as aforesaid, acted corruptly and against the duty of the aforesaid office of, &c.): [There were other Counts similar to the foregoing]: By reason and means of the speaking, &c. of which said several false, &c. words hereinbefore mentioned to have been spoken, &c. by the said defendant, it has been generally believed and suspected by the inhabitants and parishioners of the aforesaid parish of E. and by many other good, &c. that the said plaintiff in allowing such accounts of the said W. T. as aforesaid, acted corruptly and unjustly, and against the duty of his said office of, &c. and he the said plaintiff also was, hath been, and still is, on occasion of the speaking, &c. of those words, esteemed and taken to be a corrupt and partial justice, and a dishonest and unjust magistrate; and he is also on occasion of the premises aforesaid, fallen into great scandal, &c. and otherwise injured and damnified, to wit, at, &c. Damage one thousand pounds; suit, &c. 2d Count, more general.

V. LAWES.

Plaintiff obtained a verdict for 10l. damages.

T 4

MID-

Declaration in
C. B. for words
spoken by de-
fendant's wife a-
gainst the plain-
tiff and his wife,
who kept a
school, whereby
they lost several
of their scholars.

MIDDLESEX, to wit. John Mumbler, late of, &c. and Elizabeth his wife, were attached to answer John Eater, &c.; for that whereas the said plaintiff, at the time of the speaking and publishing the several false, feigned, scandalous, opprobrious, and malicious words hereafter mentioned to have been spoken by the said Elizabeth of and concerning the said J. E. and Elizabeth his wife, kept a certain school or academy for teaching and instructing by himself and his said wife, infant children; and he the said J. E. and his said wife were persons of good name, fame, credit, and reputation, and by means of keeping such school or academy, he the said J. E. was daily acquiring divers great gains and profits to the comfortable support and maintenance of himself and family, and the increase of his riches: And whereas before and at the time of the speaking and publishing the several false, &c. words hereafter mentioned, a certain infant daughter of one A. B. was a scholar of the said J. E. and under the care, tuition, and instruction of him the said J. E. and his said wife, at his aforesaid school or academy, and was likely to continue there; and the said school or academy was then and there in great esteem and repute, and the children sent there for instruction were properly taught and instructed, and carefully and tenderly treated, to wit, at, &c.; yet the said Elizabeth Mumbler, well knowing the premises, but contriving to injure the said J. E. and to bring him and his said wife into public hatred, scandal, and disgrace, and to injure him in his said business of a school-master, heretofore, to wit, on, &c. at, &c. in a certain discourse which the said E. M. then and there had with divers good and worthy subjects of this realm, of and concerning the said J. E. and his said wife, and the aforesaid school so by him kept as aforesaid, she the said E. M. then and there falsely and maliciously said, rehearsed, proclaimed, and loudly published these false, &c. English words following, of and concerning the said J. E. and his said wife, and their aforesaid school, in the presence and hearing of those subjects, that is to say, "She (meaning the said Elizabeth the wife of the said J. E.) is a hump back bitch, a hump back whore, and she (meaning the said wife of the said J. E.) is more fit to keep fish at Billingsgate than keep a school" (thereby meaning and insinuating that the said Elizabeth, the wife of the said J. E. was unfit to keep, or to instruct at the said school so kept by her and the said J. E. as aforesaid, and thereby meaning and insinuating that it was improper to place or put children under the care and instruction of the said J. E. and his said wife at their said school): And afterwards, to wit, on, &c. in a certain other discourse which she the said E. M. then and there had with divers other good and worthy subjects of this realm, of and concerning him the said J. E. and his said wife, and his said school or academy, she the said Elizabeth then and there falsely and maliciously said, &c. these other false, &c. words following of and concerning them the said J. E. and his said wife, and his said school or academy, that is to say, "They (meaning the said J. E. and his said wife) are not fit to keep a school. A fine academy over the

2d Count.

the way! (thereby meaning and intending to throw disgraceful reflections on the said school so kept by the said J. E. as aforesaid, and to have it thought and believed that the same was a very unfit and improper place for the education of youth); “she (meaning the said Elizabeth the wife of the said J. E.) is a hump back whore, a hump back bitch; and she (meaning the said Elizabeth the wife of the said J. E.) is fitter to sell fish at Billingsgate than to keep a school:” And afterwards, to wit, on, &c. at, &c. in a certain other discourse which she the said E. M. then and there had with divers other good and worthy subjects of this realm, of and concerning the said J. E. and his said wife, and their aforesaid school or academy, she the said E. M. then and there falsely and maliciously said, &c. English words following, of and concerning the said J. E. and his said wife, and their aforesaid school, or academy, in the presence and hearing of those last-mentioned subjects, that is to say, “They (meaning the said J. E. and his said wife) are not fit to keep a School, for they (meaning the said J. E. and his said wife) are two blackguards, and the neighbours all know what bad people they (meaning the said J. E. and his said wife) are; there cannot be two greater blackguards than they (meaning the said J. E. and his said wife) are,” (thereby meaning and insinuating that the said J. E. and his said wife were improper persons to have the care, education, or instruction of youth): And afterwards, to wit, on, &c. in a certain other discourse which the said E. M. then and there had with divers other good and worthy subjects of this realm, of and concerning the said J. E. and his said wife, and their aforesaid school or academy, she the said E. M. then and there falsely and maliciously said, &c. English words following, of and concerning the said J. E. and his said wife, and their aforesaid school or academy, in the presence and hearing of those last-mentioned subjects, that is to say, “If I (meaning herself the said E. M.) knew where the parents lived belonging to the children (meaning the scholars at the said school so kept by the said J. E. as aforesaid) I (meaning herself the said E. M.) would go and complain to them that Mrs. Evans (meaning the said Elizabeth the wife of the said J. E.) misused the children,” (thereby meaning and insinuating that the children sent to the said school of the said J. E. for instruction, were not tenderly treated, but were treated with inhumanity by the said Elizabeth the wife of the said J. E.): And afterwards, to wit, on, &c. at, &c. in a certain other discourse which she the said E. M. then and there had with divers other good and worthy subjects of this realm, of and concerning the aforesaid school or academy so kept by the said J. E. as aforesaid, she the said E. M. then and there falsely and maliciously said, &c. words following, of and concerning the aforesaid school so kept by the said J. E. as aforesaid, in the presence and hearing of those subjects, to wit, “The school (thereby meaning the aforesaid school so kept by the said J. E. as aforesaid) is more like a bawdy house than a school,” (thereby meaning and insinuating that the said school so kept by the said J. E. was a house of ill

3d Count.

4th Count.

5th Count.

6th Count.

ill fame, and a house where improper and indecent intercourse took place, and was carried on between persons of both sexes, to the evil example and corruption of the morals of the scholars and children entrusted to the care and instruction of the said J. E. at his said school): And afterwards, to wit, on, &c. at, &c. in a certain other discourse which she the said E. M. then and there had with Ann the wife of the said A. B. who had such child at the said school of the said J. E. as aforesaid, of and concerning the said J. E. and his said wife, and their aforesaid school or academy, she the said E. M. then and there falsely and maliciously said, &c. English words following, of and concerning the said J. E. and his said wife, and their aforesaid school or academy, that is to say, "I (meaning herself the said E. M.) am come to make a complaint of your daughter, (meaning the said child of the said A. B. which was so under the care and instruction of the said J. E. and his said wife as aforesaid, at his aforesaid school or academy), for whenever she (again meaning the said child of the said A. B.) comes to school (meaning the said school or academy so kept by the said J. E. as aforesaid) she (meaning the said child of the said A. B.) knocks at my (meaning at her the said E. M.'s) door, and behaves very rude, and her master and mistress (meaning the said J. E. and his said wife) give her encouragement (thereby meaning and insinuating that the said child of the said A. B. which was so under the care and instruction of the said J. E. and his said wife as aforesaid, was not properly instructed in good manners, but on the contrary, was encouraged by the said J. E. and his said wife in rudeness), and let her, (meaning the said child of the said A. B.) run about the streets for an hour or two together with a boy that lodges at the chandler's shop, and I myself (meaning herself the said E. M.) saw her (meaning the said child of the said A. B.) yesterday for half an hour standing in the chandler's shop passage with the boy; as to her master and mistress (meaning the said J. E. and his said wife) they are not fit to keep a school (again meaning the said J. E. and his said wife), they are two blackguards, and the neighbours all know what bad people they (again meaning the said J. E. and his said wife) are; she (meaning the said Elizabeth the wife of the said J. E.) run in debt at the chandler's shop, and when the people asked for it, she (again meaning the said Elizabeth the wife of the said John) mobbed them; there cannot be two greater blackguards than they (meaning the said J. E. and his said wife) are," (meaning and insinuating, and by the said words so spoken by the said E. M. as last aforesaid, intending to have it understood and be believed, that the said J. E. and his said wife were unfit and improper persons to have the care, education, and instruction of the said child or daughter of the said A. B. that they the said J. E. and his said wife were persons of low and ill bred manners and behaviour, and that for want of due and proper care and attention of them, the manners and morals of the said child of the said A. B. the said child had contracted rude and unbecoming manners and behaviour, and bad and vicious habits): By means of the speak-
ing

ing of which said several false, &c. words, the said J. E. was and is greatly hurt, prejudiced, and injured in his aforesaid good name, fame, credit, and reputation, and is fallen into great hatred, scandal, and disgrace, and divers persons, who had before that time committed the care and education of their children to him the said J. E. and his said wife, have, on occasion of the premises, and on no other account whatever, withdrawn and taken the same away from his said school, and wholly and absolutely refused, and still do refuse to send them there again, or put them under his care; and divers other persons, who otherwise would have their children to his said school or academy, have, on this account wholly omitted and neglected so to do; and in particular, the said J. E. saith, that by reason of the speaking and publishing of the aforesaid false and defamatory words, the aforesaid A. B. took away his said child or daughter from the care, education, and instruction of the said J. E. at his aforesaid school or academy; whereby he the said J. E. hath lost and been deprived of all benefit and advantage that otherwise would have arisen and accrued to him from continuing the said child at the said school, and under the care and instruction of him the said J. E. to wit, at, &c.; to the damage, &c.

I have drawn the best declaration I can upon this case, but on the whole I think it too doubtful both in point of law and in fact for the plaintiff to risk a trial upon.

V. LAWES.

First, Not guilty. 2d, And for further plea in this behalf, as to the speaking and publishing of such of the said words in the said declaration mentioned, and thereby supposed to have been spoken and published by the said Elizabeth the wife of the said J. M. of and concerning the said J. E. and Elizabeth his wife, as relate to the said Elizabeth being an unfit and improper person to keep the said school in the said declaration mentioned, the said J. M. and Elizabeth his wife, by leave of, &c. *actio non*; because they say, that she the said Elizabeth, before and at the said several times when, &c. was an unfit and improper person to keep the said school in the said declaration mentioned, to wit, at, &c. for which reason the said Elizabeth the wife of the said J. M. at the said several times when, &c. did speak and publish, of and concerning the said Elizabeth such of the said words in the said declaration mentioned, and thereby alledged to have been so spoken and published by the said Elizabeth the wife of the said J. M. as relate to the premises aforesaid, and as she lawfully might for the cause aforesaid; and this, &c.; wherefore, &c. if, &c.

Plea; 1st, not guilty; 2d, that the plaintiff is an improper person to keep a school.

S. LE BLANC.

And the said J. E. as to the said plea of the said J. M. and Elizabeth his wife, by them secondly above pleaded in bar, as to the speaking and publishing such of the said words in the said declaration mentioned, and by the second plea confessed to have been spoken

Replication, *de injuria*, &c.

spoken and published by the said Elizabeth the wife of the said J. M. of and concerning the said J. E. and Elizabeth his wife, as relate to the said Elizabeth being an unfit and improper person to keep the said school in the said declaration mentioned, says, that he the said J. E. ought not to be barred from having and maintaining his said action thereof against them; because he says that the said E. M. at the said several times when, &c. of her own wrong and without any such cause as is by them the said J. M. and Elizabeth his wife in their second plea in that behalf alledged, to wit, at, &c. spoke and published of and concerning the said Elizabeth such of the said words in the said declaration mentioned, and thereby alledged and by the said second plea admitted to have been spoken and published by the said E. M. the wife of the said J. M. as relate to the premises aforesaid, in manner and form as the said J. E. hath above thereof complained against them the said J. M. and Elizabeth his wife; and this he the said J. E. prays may be enquired of by the country; and the said J. M. and E. his wife do the like; therefore, &c. &c.

V. LAWES.

Declaration, by MIDDLESEX, to wit. Charles Rompett, gentleman, one of bill of privilege, the attorneys of the court of our lord the king, before the king against defend- himself present here in court, in his own person, according to the ant, for words liberties and privileges of the said court for such ministers and spoken of plain- other officers of the said court from time immemorially used and tiff, who was an approved of, complains of Samuel Ginger, gentleman, one attorney, and other of the attornies of the said court of our lord the king, before had brought an action for one the king himself present here in court, in his own proper person, A. B. since de- of a plea of trespass on the case; for that whereas he the said ceased, against Charles now is a good, true, honest, just, and faithful subject of C. D. who had this kingdom, and as such hath always behaved and governed him- been surrender- self until the speaking and publishing the several false, scandalous, ed and since su- malicious, and defamatory words hereafter mentioned to have been perfed, for spoken and published by the said Samuel of and concerning the saying that the said Charles, was always esteemed and considered as a person of discharge of C. D. good name, fame, credit, and reputation, and had deservedly ob- was a contrived tained and acquired the benevolence, good opinion, and credit of thing, and that all his neighbours, and of other good and worthy subjects of this plaintiff took a kingdom: And whereas he the said Charles, at the time of the bribe. speaking and publishing of the several false, &c. hereafter mention- ed, was, and long before had been, and from thence hitherto hath been, and still is, one of the attornies of the court of our lord the king now here, and in the office, practice, and business of an attorney at law, has been during all that time retained and employed by divers subjects of this realm to prosecute and defend for them, and, as their attorney, agent, and solicitor, divers suits and businesses in this court; and in other his majesty's courts at Westminster and elsewhere, and also to do and negotiate other affairs and business; and the said Charles hath, during all that time transacted and carried on all such causes, suits, and businesses with

with care, judgment, integrity, and reputation, without being guilty, and until the speaking and publishing the several false, &c. hereafter mentioned, been suspected of having been guilty of taking or accepting bribes in the course of his said practice or profession, or of any other species of mal-practice or misconduct in his said profession: And whereas the said Charles, before the speaking and publishing of the several false, &c. hereafter mentioned, had been and was in his said business or profession employed by one Matthew Gobber, now deceased, to commence and prosecute a certain action or suit at law in this court here, wherein he the said Matthew Gobber was plaintiff, and one J. S. and one G. G. were defendants, and in which said action the said J. S. had been and was surrendered into the custody of the marshal of the Marshalsea of our lord the now king, before the king himself, at the suit of the said Matthew Gobber, but afterwards superseded and discharged from and out of such custody without any default, omission, or neglect in or by the said Charles as such attorney in the said action or suit, on the contrary the said Charles, in the prosecuting, carrying on, and conducting the said action or suit, behaved and conducted himself with great care, integrity, and honesty, and according to his duty as such attorney for the said M. G. therein as aforesaid; and the said Charles had acquired and was daily acquiring great gains and riches in and by his said business and profession of an attorney at law, to the comfortable support of himself and his family, and the increase of his riches, to wit, at, &c. in, &c. ; yet the said Samuel, well knowing the premises, but contriving, &c. the said Charles in his aforesaid good name, &c. and in his said business or profession of an attorney at law, and to cause him to be esteemed and taken to be a dishonest and corrupt practiser in his said profession, and to be a person not fit to be trusted and employed therein, and to impoverish and wholly ruin him, heretofore, to wit, on, &c. at, &c. in a certain discourse which the said Samuel then and there had with one Elizabeth Gobber (*who was then and there the administratrix of the goods and chattels of the said M. G. deceased*) of and concerning the said Charles in his said profession of an attorney at law, and of and concerning the said action or suit so brought against the said J. S. as aforesaid, and his aforesaid discharge out of custody, he the said Samuel then and there falsely and maliciously said, rehearsed, and published to the said E. G. *so being the administratrix of the said M. G. as aforesaid*, these (1) false, &c. following, of and concerning the said Charles (1) "other" in his said profession of an attorney at law, and of and concerning the said action or suit so brought against the said J. S. as aforesaid, and his aforesaid discharge out of custody, that is to say, "The discharge of J. S. (meaning the aforesaid J. S.) out of prison (thereby meaning and alluding to the said discharge of the said J. S. from and out of custody in the said action or suit so brought against him as aforesaid) was a contrived thing between him (meaning the said J. S.) and Mr. Rompett," (meaning the said Charles, and also meaning and insinuating BY THE SAID SEVERAL WORDS SO SPOKEN

2d Count.

3d Count.

4th Count.

5th Count.

6th Count.

SPOKEN OF AND CONCERNING THE SAID CHARLES AS AFORE-
 SAID, that the said discharge of the said J. S. FROM AND OUT OF
 custody had been obtained by the CONNIVANCE AND CONTRIVANCE
 of the said Charles, and that the said Charles had on that occa-
 sion behaved corruptly and dishonestly in the exercise and practice
 of his said profession of an attorney at law): And whereas after-
 wards, to wit, on, &c. in a certain other discourse which the
 said Samuel then and there had with the said Elizabeth Gobber,
 &c. &c. [2d Count same as first, omitting what is in Italic]:
 And whereas, &c. &c. [3d Count same as the second Count, only
 omitting what is in small capitals]: And whereas afterwards, to
 wit, on, &c. at, &c. in a certain other discourse, &c. of and con-
 cerning the said Charles, &c. he the said Samuel then and there
 falsely and maliciously said, &c. to the said E. G. these other false,
 &c. of and concerning the said Charles in his said profession of,
 &c. and of and concerning the said action or suit so brought, &c.
 and his aforesaid discharge out of custody, that is to say, "He
 (meaning the said Charles) took a bribe from J. S. (meaning the
 aforesaid J. S.) to let him (again meaning the said J. S.) out of
 prison (thereby meaning and alluding to the said discharge of the
 said J. S. out of custody in the said action or suit so brought, &c.);
but did not do it out of ignorance," (thereby meaning and insinuat-
 ing that *the said discharge of the said J. S. out of custody was not the
 effect of any ignorance in the said Charles, but that the said Charles
 voluntarily suffered and permitted such discharge, and that he ac-*
cepted of a bribe or reward from the said J. S. for permitting such
discharge, and that the said Charles had on that occasion, &c. &c.
 [as before]: And whereas, &c. &c. [This Count as the fourth,
 omitting the Italic]: And whereas on, &c. at, &c. in a cer-
 tain other discourse, &c. with one William Phelps, of and con-
 cerning the said Charles in his said profession of, &c. and of and
 concerning the said action, &c. and his aforesaid discharge, &c.
 and also of and concerning a certain action or suit which had been
 before then brought against the said Charles by the said E. G. as
 such administratrix of the said M. G. as aforesaid, for and on ac-
 count of such discharge, as being by and through the negligence
 and misconduct of the said Charles in the conduct of the said action
 or suit against the said J. S. and in which said action he the said
 Samuel was then and there concerned as attorney of and for the
 said Elizabeth, he the said Samuel in answer to certain questions
 and observations then and there respectively made and put by the
 said W. P. to the said Samuel as to the said Charles in his said pro-
 fession of an attorney at law, and as to the said action so brought
 against him on account of the said discharge of the said J. S. out
 of custody as aforesaid, and the grounds there were for such action,
 then and there falsely and maliciously said, &c. to the said W. P.
 these other false, &c. following, of and concerning the said Charles
 in his said profession of, &c. and of and concerning the aforesaid
 discharge of the said J. S. out of custody as aforesaid, and of and
 concerning the said action so brought against the said Charles upon
 account

account of such discharge as aforesaid, and the grounds and foundation for such action, that is to say, "I (meaning himself the said Samuel) am concerned in a cause (meaning the said action or suit so brought against the said Charles as aforesaid, and wherein the said Samuel was so concerned as attorney for the said E. G. as aforesaid) that the issue will prove whether he (meaning the said Charles) has done as he (again meaning the said Charles) ought to do; if he (again meaning the said Charles) is clear of any reproach (meaning if there was no foundation for the said action or suit so brought against the said Charles as aforesaid) why not come forward and try the cause (meaning the said action or suit so brought against the said Charles as aforesaid), without litigiously filing several bills in the exchequer," (thereby meaning and insinuating that the conduct of the said Charles in the course of the said action or suit so brought against the said J. S. as aforesaid, had been such as merited reproach and censure, and also such as was a good ground and foundation for the said action so brought against him the said Charles on account of the aforesaid discharge of the said J. S. out of custody as aforesaid; and also meaning and insinuating by the said words so spoken by the said Samuel as last aforesaid, that the said Charles being conscious of there being a ground for such action against him, had, with a view to defeat or delay the same, vexatiously and litigiously sued and prosecuted the said E. G. in his majesty's court of exchequer at Westminster): And afterwards, to wit, on, &c. in a certain other discourse, &c. then and there had with divers other good and worthy subjects of this realm, of and concerning the said Charles in his, &c. he the said Samuel then and there, in the presence and hearing of those subjects falsely, &c. these other false, &c. of and concerning the said Charles in his said, &c. that is to say, &c. &c. [as in the former Counts to the end]: And afterwards, &c. [same as the last Count, only say, 8th Count, "that he took a bribe"] : And afterwards, &c. &c. [same as last 9th Count, Count] : And afterwards, &c. &c. [same as last Count, only in- 10th Count, stead of saying "he took," say I (meaning himself the said Samuel) have been informed that Mr. Rompett (meaning the said Charles) took a bribe, &c. &c.]; whereas in truth and in fact the said Samuel, at the time of the speaking and publishing of the several words so by him spoken as last-aforesaid, had not been informed that the said Charles had taken a bribe to let the said J. S. out of prison as aforesaid: by reason of the speaking and publishing of which said several false, &c. he the said Charles was and is very much hurt, injured, and damnified in his aforesaid good name, &c. and in his aforesaid business and reputation, and is brought into public scandal and disgrace amongst his neighbours and other good and worthy, &c. insomuch that divers of those neighbours and subjects who were used and accustomed to retain and employ him in his said business and profession, and to whom the innocence and integrity of the said Charles in the premises were unknown, have always, since the speaking and publishing of the said several words, and by reason thereof, and of their suspicions consequent upon the same,

Special damage.

same, hitherto declined and desisted from employing him in his said business and profession as they were used and accustomed to do, and would have done again had not those words been spoken; and in particular, the said Charles saith, that by reason and means of the speaking and publishing of the said several words spoken by the said Samuel to the said E. G. as aforesaid, she the said E. G. did from thenceforth decline to retain and employ him the said Charles to proceed against the said J. S. at the suit of the said E. G. as such administratrix of the said M. G. as aforesaid, for and upon the debt or cause of action aforesaid, whereon he had been so sued by the said M. G. as aforesaid, as she would otherwise have done; and she the said E. G. was also induced to bring and did in fact bring the said action or suit so herein before alledged to have been by her brought against the said Charles for and on account of the said J. S. having been so discharged out of custody as aforesaid; and the said Charles also saith, that by reason of the speaking and publishing of the said several words hereinbefore mentioned, and particularly of the said words so spoken by the said Samuel to the said W. P. as aforesaid, he the said W. P. and also one E. H. P. his daughter, for whom the said Charles had before been concerned in his aforesaid business or profession and as a solicitor in equity, refused any longer to employ him in certain business, in which he was then employed and concerned, or in any other business whatsoever; whereby he the said Charles hath been deprived of great gains and profits which would otherwise have arisen to him from the doing and performing of such several businesses as aforesaid, and from his being concerned and continuing to be concerned therein, and in other business of and for the said E. G. W. P. and E. H. P. and such other of his clients as so left off employing him as aforesaid, and he the said Charles also was and hath been, and is, on occasion and by reason and means of the speaking and publishing of the aforesaid words, and of other the premises aforesaid, otherwise greatly injured and damnified, to wit, at, &c. to the damage of the said Charles of five thousand pounds; and therefore he brings his suit, and prays, &c. Pledges, &c.

V. LAWES.

Plea, not guilty,
and issue.

And the said Samuel in his own proper person comes and defends the wrong and injury, when, &c. and says he is not guilty of the premises aforesaid, above laid to his charge, or any part thereof in manner and form as the said Charles hath above thereof complained against him; and of this he puts himself upon the country, and the said Charles doth the like; therefore let a jury come before our lord the king at Westminster, on, &c. who are in no way of kin either to the said Samuel or the aforesaid Charles, to recognize upon their oath the whole truth of the premises, because as well the said Samuel as the said Charles have put themselves upon that jury, the same day is given to the parties aforesaid, at the same place.

MID-

MIDDLESEX, to wit. William Loud complains of James Frump, being, &c.; for that whereas the said William now is a good, true, honest, just, and faithful subject of this realm, and as such hath always from the time of his nativity hitherto behaved and governed himself, and hath always, until the speaking and publishing the several false, scandalous, malicious, and defamatory words hereafter mentioned to have been spoken and published by the said James of and concerning the said William, been held, esteemed; and reputed to be a person of good name, fame, credit, character, and reputation, and hath never been guilty, nor until the speaking and publishing of the several false, &c. words hereafter mentioned been suspected to have been guilty of any kind of fraud, cheating, or deceit, or of any such crime: And whereas the said William, before and at the several times of the speaking and publishing of the several false, &c. words hereafter mentioned was, and from thence hitherto hath been, and still is a victualler, and the trade and business of a victualler during all that time hath used, exercised, followed, and carried on, and still doth use, exercise, follow, and carry on, in a certain public ale or victualling-house of him the said William, commonly called and known by the name or sign of the Blue Posts; and whereas the said William hath, during all the time aforesaid, exercised and carried on his said trade and business with the greatest fairness and integrity, and without at any time mixing, or until the speaking and publishing of the several false, &c. words hereafter mentioned, been suspected of mixing the porter or strong beer sold by him in his said trade with four or other small beer, or other liquor of an inferior or prejudicial nature; and the said William was also at the time of the speaking and publishing the several false, &c. words hereafter mentioned, daily acquiring sundry great gains and profits in his aforesaid business, to the comfortable support of himself and family, and the increase of his riches, to wit, at, &c.; yet the said James, well knowing all and singular the premises aforesaid, but contriving and maliciously intending, wrongfully and unjustly to prejudice, degrade, and injure the said William in his aforesaid good name, &c. and in his business aforesaid, and to bring him into public scandal, ignominy, and disgrace among all his neighbours, and all other good and worthy subjects of this realm, and to subject him to the pains and penalties by the laws of this realm provided against persons mixing small beer and other liquors with porter or strong beer, heretofore, to wit, on, &c. at, &c. in a certain discourse which he the said James then and there had with divers other good and worthy subjects of this realm, of and concerning the said William in his aforesaid business, he the said James then and there falsely and maliciously did say, proclaim, and loudly publish these false, &c. words of and concerning the said James in his said business, in the presence and hearing of those subjects, that is to say, "There is Loud at the Blue Posts (meaning him the said William) buys four small beer and mixes it (meaning such four small beer) with his strong

Declaration
in B. R. for
words spoken a-
gainst plaintiff
(who kept a
public ale-
house) by de-
fendant, saying
that he mixed
the porter he
sold with four
small beer; &c.
&c.

2d Count.

3d Count.

4th Count.

(thereby meaning and insinuating that the said William in his
aforesaid business fraudulently mixed four small beer with the
strong beer sold by him in his said business, and thereby
cheated and defrauded his customers in his said trade and business),
and I (meaning himself the said James) can prove it (meaning
that the said William so mixed four small beer with the strong
beer sold by him in his said business); and I (meaning himself the
said James) can bring the man forward that serves him (meaning
the said William) with it," (meaning with such four small beer as
aforesaid): And afterwards, to wit, on, &c. at, &c. in a certain
other discourse which he the said James then and there had with
divers other good and worthy subjects of this realm of and con-
cerning the said William in his aforesaid business, he the said
James then and there falsely, &c. said, &c. these other false, &c.
words following, of and concerning the said William in his busi-
ness aforesaid, in the presence and hearing of those last-mentioned
subjects; that is to say, " Loud (meaning him the said William)
buys four small beer and puts it (meaning such four small beer as
last aforesaid) into his porter," (meaning the porter sold by him the
said William in his aforesaid business, and also meaning and in-
sinuating by the said words so spoken by the said James as last
aforesaid, that the said William in his said business fraudulently
mixed four small beer with the porter sold by him in his said busi-
ness, and that he thereby cheated and defrauded his customers in
his said business): And afterwards, to wit, on, &c. in a certain
other discourse, &c. &c. [as before, till you come to the words,
which were as follow], " Loud (meaning the said William) buys
stale (meaning a certain liquor composed of four small beer and
other ingredients) and mixes it (meaning such liquor composed of
four small beer and other ingredients as aforesaid) with his porter,"
(meaning the porter sold by him the said William in his aforesaid
business, and also meaning and insinuating by the said words so spoken
by the said James as last aforesaid, that the said William in his said
business fraudulently mixed four small beer and other ingredients
with the porter sold by him the said William in his said business,
and that he thereby cheated and defrauded his customers in his said
business): And afterwards, to wit, on, &c. at, &c. [as before to
the words, then thus], " There is Loud and one A. B. (meaning
one A. B. who also then and there exercised and carried on the said
business of a victualler near to him the said William) both buy
four small beer and mix it (meaning such four small beer as afore-
said) with their porter" (meaning the porter sold, &c. &c. [as be-
fore]): And afterwards, to wit, on, &c. in a certain other dis-
course, &c. [to the words as before, then thus], " Loud (mean-
ing the said William) mixes his porter (meaning the porter sold by
him the said William in his aforesaid business) with small beer and
sells it for strong (meaning for strong beer); and I (meaning him-
self the said James) can prove it," (meaning that the said William
so mixed the porter sold by him in his said business with small beer,
and afterwards sold it for strong beer, and also meaning and in-
sinuating

sinuating by the said words so spoken by the said James as last aforesaid, that he the said William was an unfair and a dishonest trader in his aforesaid business, and that he cheated and defrauded his customers therein, by fraudulently mixing the said strong beer sold by him in his said business with small beer and with beer of an inferior quality and goodness): And afterwards, to wit, on, &c. at, &c. in a certain other discourse, &c. [as before], “He (meaning the said William) buys four small beer, and mixes it (meaning such four small beer) with his porter,” (meaning with the porter sold by him the said William in his aforesaid business; and also meaning and insinuating by the said words so spoken by the said James as last aforesaid, that he the said William in his aforesaid business cheated his customers by mixing the strong beer sold by him to them with four small beer): by means of the speaking and publishing of which said several false, &c. he the said William is very much injured, prejudiced, and damnified in his aforesaid good name, &c. and in his aforesaid trade and business, to wit, at, &c. Damages. Suit. V. LAWES.

Easter Term, 28. Geo. III.

LONDON, to wit. Andrew Brownhead complains of Joseph Yanko; for that whereas the said plaintiff now is a good, true, honest, just, and faithful subject of this realm, and as such hath always, from his nativity hitherto behaved and governed himself, and hath never been guilty, nor until the committing of the grievances hereafter mentioned, suspected of being guilty of wilful and corrupt perjury, or of any other such crime or offence: And whereas before the grievance hereafter mentioned, to wit, on the nineteenth of February A. D. 1788, at L. &c. a certain bill of exchange, purporting to be the first, the second, and third of the same tenor or date being unpaid, for seventy-nine pounds, drawn by and under the firm of John Proud and company, bearing date at Annapolis in Maryland, America, the first day of November 1787, payable to his excellency William Sourcroust, esquire, or order at thirty days after sight, and directed to a certain firm or partnership, in which he the said defendant then, and at the time of the committing of the grievance hereafter mentioned, was concerned as a partner, to wit, a certain partnership then and there exercised and carried on by and under the firm of Yanko and Proud was presented to the said defendant as a partner in the said partnership for acceptance, by W. D. notary public, by a certain then clerk of him said W. D. on account of Messrs. Donald and Burton of L. aforesaid, merchants, the then holders of the same bill by fair and *bona fide* means, and not by or through the means of perjury, or any other unlawful means or manner practised, or committed by the said plaintiff, on whose account the said bill had been, and was before then negotiated and indorsed over; yet the said defendant, well knowing the premises aforesaid, did not, nor would then and there accept the said bill of exchange, but contriving

Declaration for words concerning a bill of exchange drawn in Maryland, which defendant was to have accepted, but that he refused so doing, assigning a reason in writing, that plaintiff had procured it through the means of perjury, and that he was then under prosecution for the offence.

and maliciously intending not only to defame and injure him said plaintiff in his aforesaid good name, &c. on, &c. at, &c. did refuse to accept the said bill, and by way of reason for his not accepting the same, did then and there falsely and maliciously cause and procure to be delivered by a certain then clerk of them the said defendant to the said clerk of the said W. D. as such notary public as aforesaid, a certain false, scandalous, and defamatory paper writing, containing therein as a reason for not accepting the said bill of exchange, certain false, scandalous, and defamatory matter of and concerning the said plaintiff, and of and concerning said bill of exchange, and the aforesaid negociation of the same, to the tenor and effect following, to wit, "The bill seventy-nine pounds, dated the first of November 1787, payable (meaning payable) to his excellency (meaning his excellency W. S.) (meaning the said bill of exchange so presented to the said defendant for his acceptance as aforesaid) was obtained from the said W. S. (meaning the said W. S. the payee in the said bill) and J. P. and Co. (meaning the drawers of the said bill) by A. B. (meaning said plaintiff) the plaintiff in this suit, through the means of wilful and corrupt perjury, for which A. B. (again meaning the said plaintiff) now stands presented in Maryland Crown Court, February the nineteenth 1788" (thereby meaning and intending to have it understood and believed that the said plaintiff had been and was guilty of wilful and corrupt perjury, that he was then under prosecution for the said offence, and that the said bill of exchange had been and was obtained by him the said plaintiff by means of perjury): And the said plaintiff in fact further saith, that the said defendant further continuing and maliciously intending to defame and injure him said plaintiff as aforesaid, afterwards, to wit, on, &c. did maliciously *compose, write, and publish*, and cause to be *composed, written*, and published a certain other false, scandalous, and defamatory matter of and concerning said plaintiff, and of and concerning the said bill of exchange so presented to the said defendant *for acceptance as aforesaid*, and the negociation of the same to the tenor and effect following, to wit, the bill, &c. &c. (as in first Count: Same as second Count, only omitting what is in Italic): And the said plaintiff in fact further says, that the said defendant further contriving and maliciously intending as aforesaid, afterwards, to wit, on, &c. in a certain other discourse which the said defendant then and there had with divers good, &c. of and concerning said plaintiff, and of and concerning said bill of exchange hereinbefore mentioned, and the aforesaid negociation of the same, he the said defendant then and there, in the presence and hearing of those subjects, falsely and maliciously said, rehearsed, proclaimed, and loudly published these scandalous, malicious, and defamatory words following of and concerning said plaintiff, and of and concerning the said bill of exchange and the negociation of the same, that is to say, "The bill for seventy-nine pounds, dated the first of November 1787, payable to his excellency W. S. (meaning, &c.) was obtained from W. S. (meaning, &c. and J. P. and Co. (meaning, &c.) by A. B. (meaning, &c.) through the

2d Count.

3d Count.
4th Count.

the means of wilful and corrupt perjury, for which A. B. (again meaning, &c.) now stands presented in Maryland" (thereby meaning, &c. Inuendoes as in first Count. Colloquium same as last, 5th Count. Words: "It (meaning the said bill of exchange so presented to said defendant as drawee as aforesaid) was obtained by A. B. (meaning, &c.) through the means of wilful and corrupt perjury, for which he (again meaning, &c.) stands presented in Maryland" (thereby meaning that said plaintiff had been and was guilty of perjury). Colloquium as last. Words: "He obtained it by perjury" (with proper inuendoes); by means of which said several grievances committed by the said defendant as aforesaid, he the said plaintiff was and is greatly hurt and injured in his aforesaid good name, &c. and is reputed and suspected amongst divers good, &c. to have been and to be guilty of the crime of wilful and corrupt perjury, and to have obtained the aforesaid bill of exchange by means of perjury, and by reason of the said bill of exchange having been so refused acceptance as aforesaid by the said defendant, on presenting the same for acceptance as aforesaid, the said bill was afterwards, to wit, on, &c. returned by the said W. D. with a certain protest of him the said W. D. as such notary public as aforesaid accompanying the same, certifying and containing therein a copy of the said paper writing so delivered by the same defendant on the same being so presented for acceptance as aforesaid, whereby the purport and contents of the said paper writing became and were, and have been and are divulged and made public, and in consequence thereof the credit of the said plaintiff hath been and is considerably injured and damaged, to wit, at, &c. to the damage of, &c.

6th Count.
Conclusion.

Easter Term, 28. Geo. III.

MIDDLESEX, to wit. William Cork complains of Richard Fraud; for that whereas the said William C. now is, &c. and as such, &c. and during all that time of the speaking, &c. of, &c. hath been ever held, reputed, and esteemed, taken, and looked upon to be a person of good name, &c. and to be a honest, fair, just, and upright man in all his dealings and concerns, and never in all his lifetime hitherto, nor until, and was at any time suspected to be guilty of any kind of theft, larceny, felony, trickery, deceit, or falsehood, or of buying or receiving stolen goods, knowing them to be stolen, or of any dishonesty or fraud whatsoever, but hath ever lived and continued free, clear, and innocent, and wholly unsuspected of and from all and all manner of such detestable and abominable crimes: And whereas the said W. C. long before and at the time of, &c. hath been and still is a barge builder and barge master, to wit, at, &c. and in the exercise of his said business hath during all the time aforesaid behaved and conducted himself with great justice, fairness, integrity, honesty, and uprightness; and the said W. C. so being such barge master and barge builder as aforesaid, he the said W. C. long before and at the time of, &c. was employed by divers good and worthy sub-

Declaration for words spoken of plaintiff, insinuating his having purchased stolen goods, and knowing them to be so; per quod some of plaintiff's customers desisted having any further dealings with him.

jects of our lord the king in the way of his said trade and business, and particularly was retained and employed by one S. W. as well in and about the affairs, matters, businesses, and persons trading and using commerce, under the name, stile, and firm of the Albion Mill Company, to whom the said S. W. then was and still is agent and servant, as in other affairs, matters, and businesses of and for the said S. W. and also by J. A. &c. &c. &c. as well in the way of the said trade and businesses of the said W. C. as otherwise, by reason of which said premises, and of the said retainers, employers of the said S. W. J. A. &c. &c. &c. he the said W. C. had from time to time, during the time that he was so retained and employed as aforesaid, got, procured, and obtained to himself great gains, profits, and emoluments in the way of his said trade, businesses, and otherwise, during all the time aforesaid that he was so retained and employed as aforesaid, he the said W. C. behaved and conducted himself with the utmost fidelity, honesty, and integrity in all his dealings and concerns, as well with and towards the said S. W. J. A. &c. &c. as towards all others by whom he was so retained and employed as aforesaid, by reason whereof he the said W. C. before, &c. had deservedly got and obtained to himself the benevolence, good opinion, and credit as well of the said S. W. J. A. &c. &c. &c. of the said persons by whom he was so retained and employed, as of all other persons any ways acquainted with him the said W. C. and had raised and acquired great business in the way of his trade, and yearly gained and procured divers large sums of money, to the comfortable support of himself and his family, and to the great increase of his substance; yet the said R. F. well knowing the premises, but greatly envying the happy state and condition of the said W. C. and contriving, &c. to hurt, &c. the said W. C. in his good name; and as well in his aforesaid business as otherwise, and thereby not only to bring him into public scandal amongst all his neighbours and acquaintance, and other good, &c. and also wrongfully and injuriously to subject him to the punishment, pains, and penalties made and provided against thieves and felons, and against buyers or receivers of stolen goods, knowing them to be stolen, but also to bring him into discredit and disgrace with the said S. W. J. A. &c. &c. and all others by whom the said W. C. was so retained and employed in the way of his said business and otherwise as above-mentioned, and to cause the said S. W. J. A. &c. and all his customers and employers in his said business and otherwise, to leave and desert him, and to desist from employing him in his aforesaid business, or to have any manner of dealings or concerns with him, and thereby to impoverish and ruin the said W. C. heretofore, to wit, on, &c. at, &c. in a certain discourse, &c. [here go on with the words and proper innuendoes for several Counts]; by reason of the speaking, &c. of which, &c. he the said W. C. is not only very much injured, degraded, and damaged in his good name, &c. and is also fallen into public scandal, &c. amongst all his friends, neighbours, and acquaintances, and other faithful and worthy subjects of this realm, but also very many of those

Conclusion.

those friends and neighbours, and other faithful subjects of this kingdom, and particularly the said S. W. J. A. to whom the innocence and integrity of the said W. C. in the premises were unknown, have always from the time of, &c. so vehemently suspected the said W. C. to have been guilty of felony, and of buying and receiving stolen goods, knowing them to be stolen, that the said S. W. J. A. &c. and many others of his said customers and employers on the occasion always from thence afterwards hitherto have declined from keeping him company, or have any manner of conversation with him, or have any dealings or concerns with him in the way of his said trade and business or otherwise, as before they were used and accustomed to have, and do still daily more and more withdraw themselves from his company, conversation, and dealing with him in the way of his trade, to wit, at, &c.

V. LAWES.

2. L I B E L.

LONDON, to wit. W. P. and T. H. complain of T. L. gentleman, one of the attornies of the court of our lord the king himself present here in court in his proper person; for that whereas they said plaintiffs, before and on the twelfth day of August A. D. 1775, were seised in their demesne as of fee of and in two undivided third parts of a certain manor; with the appurtenances, called Great Birch, in the county of Essex, and also of two undivided third parts of a certain farm lying within the said manor, and containing, besides the buildings, a great quantity of land, to wit, two hundred acres of land, and which said two undivided third parts of the said farm, at the time of the committing the grievance hereafter mentioned, were in the occupation of one Joseph Skipper, as a tenant thereof to the said W. and T. and being so seised, they the said W. and T. wished and intended to sell, and were desirous of parting with the said two undivided third parts of the said manor, with the appurtenances, and of the said farm, for a valuable consideration of the said W. and T. had for that purpose, before the said twelfth day of August, in said A. D. 1775, advertised and published such their intention and desire in divers public newspapers; nevertheless the said defendant, well knowing the premises, but contriving and maliciously intending to bring the title of the said plaintiffs to the said two undivided third parts of the said manor, with the appurtenances, and of the said farm, into dispute, and to prevent them the said plaintiffs in their desire to sell the same, he the said defendant did, on the said twelfth day of August in said A. D. 1775, at L. aforesaid, falsely and maliciously print and publish, and caused to be printed and published in a certain newspaper commonly called and known by The London Evening Post, the false and malicious advertisement following, that

Bill against an attorney for defamation of plaintiff's title by advertising.

is to say, *Whereas an advertisement (meaning an advertisement made by said plaintiffs) hath lately appeared in the public papers, giving notice, that the manor of Great Birch, with the courts, quit rents, perquisites, and profits, (meaning the said manor, with the appurtenances, of two undivided third parts of which the said plaintiffs were then and are still seised as aforesaid) and also a farm in the occupation of J. S. situate in the parish of G. B. in the county of Essex, (meaning the said farm of two undivided third parts of which the said plaintiffs were then and are still seised as aforesaid), are to be sold, and that an enquiry was to be made of Mr. Maykins at Colchester, and Mr. P. at No. 37. Bunhill-row, the public is therefore requested to take notice, in order to prevent any imposition on a purchaser, that the said manor, farm, and premises (meaning said manor, with the appurtenances, and the said farm of two undivided third parts of which the said plaintiffs were and are so seised as aforesaid) were settled upon Mrs. W. widow of Richard W. W. esquire, deceased, as her jointure, and the said R. W. W. being seised thereof (again meaning said manor, with the appurtenances, and the said farm of two, &c. as before) in fee, devised the same (again meaning said manor, &c.) by his will to the said Mrs. W. his wife, and her heirs for ever; thereby meaning and falsely insinuating that said plaintiffs had no right, title, or interest in the said manor, with the appurtenances, and the said farm, or either of them, or in any part of them, or either of them, whereas in truth and in fact the said manor, with the appurtenances, and the said farm, or either of them, in fee; and whereas in truth and in fact the said R. W. W. was not seised of the said manor, with the appurtenances, and of the said farm, or either of them, in fee; and whereas in truth and in fact the said R. W. W. did not devise the said manor, with the appurtenances, and the said farm, or either of them, to the said Mrs. W. his wife, and to her heirs for ever; and whereas in truth and in fact they the said plaintiffs, at the time of the publishing of said false, &c. advertisement as aforesaid, were seised of two undivided third parts of said manor, with the appurtenances, and of the said farm in their demesne as of fee as aforesaid; by reason and means of the publishing of which said false advertisement as aforesaid, the title of said plaintiff in and to the said two undivided third parts of the said manor, with the appurtenances, and of the said farm, is brought into great disrepute, and many persons who were willing to treat and deal, and would have otherwise treated and dealt with the said plaintiffs for the purchase of the said two undivided third parts of the said manor, with the appurtenances, and of the said term, have been deterred from doing the same, and have wholly desisted therefrom, and the said plaintiffs have been totally prevented in their desire to sell and dispose of the said two undivided third parts of the said manor, with the appurtenances, and of the said farm, for a valuable consideration, neither have they sold the same, or either of them, or any part thereof: And whereas, &c. [a 2d Count as first, only saying that said plaintiffs had, before the*
twelfth

twelfth of August in said A. D. 1779, communicated such their desire and intention to divers people;] nevertheless, &c. maliciously print and publish, and cause to be printed and published a certain other false and malicious advertisement in a certain other newspaper called The London Evening Post, by which said last-mentioned advertisement he said defendant did falsely assert, publish, and declare that the said manor, farm, and premises (meaning, &c.) were settled, &c. [every thing else as in first Count]. Damages two thousand pounds. Suit, &c. Pledges, &c.

LONDON, to wit. S. W. complains of J. C. being in the custody, &c.; for that whereas, &c. [go on as in the inducement to declaration for words of insolvency, &c.; yet said defendant, well knowing the premises, but greatly envying the happy state and condition of the said Samuel, and contriving and maliciously intending to hurt, degrade, damnify, and injure him the said Samuel in his good name, fame, credit, and reputation in his aforesaid business, and to cause him to be esteemed and reputed to be a man worthy of no credit, and also to prejudice, hurt, injure, and damnify said plaintiff with one Mark Huish, a stocking weaver at Nottingham, who, for a long time had dealt with, and did then deal with said plaintiff in the way of his trade, and to induce and procure the said Mark Huish to cease and leave off dealing with the said plaintiff for the future, on the sixth day of July A. D. 1756, at London, &c. aforesaid, to wit, in the parish of Maryle-bow, in the ward of Cheap, did falsely, maliciously, and scandalously write and publish, and cause and procure to be wrote and published a certain scandalous and malicious libel of and concerning said plaintiff in his aforesaid trade and business, in the form and manner of a letter directed to said Mark Huish, by the name and description of Mr. John Hughes, stocking weaver, at Nottingham, dated the sixth day of the month (meaning thereby the sixth day of July aforesaid) containing therein this false, scandalous, libellous, defamatory, and opprobrious matter following of and concerning said plaintiff in his aforesaid business: "Sir, you (meaning said Mark Huish) will be surprized to see a stranger write to you (meaning said M. H.), but as I (meaning himself said defendant) have no other *view* but doing as I (again meaning himself said defendant) would be done by, therefore as I (again meaning himself defendant) believe you (again meaning said M. H.) are a fair trader, therefore cannot see you (meaning said M. H.) in such hands (meaning said plaintiff's hands) without letting you (again meaning said M. H.) know it, for I (again meaning himself said defendant) am told you (again meaning said M. H.) have large dealings with one S. Warpur (meaning said plaintiff) in Philpot-lane, London (meaning Philpot-Lane, London, where said plaintiff then lived, dwelt, resided, and carried on his said trade and business), and he (meaning said plaintiff) was a bank-

Declaration for a libel by letter, intimating plaintiff to be insolvent.

bankrupt some years before the writing and publishing of the said libel) and never could get his (meaning said plaintiff) certificate, so all that he (again meaning said plaintiff) has or deals for is his (meaning said plaintiff) former creditor's right, and he (meaning said plaintiff) has not been in business above three quarters (meaning three quarters) of a year, and now is joined with his (meaning said plaintiff's) brother (meaning one George Warpur) and J. Mounter (meaning one John Mounter), and they (meaning said plaintiff, George Wilson, and J. Mounter) get all the credit they (meaning said, &c.) can, by one (meaning one of the three last mentioned persons) recommending another, (meaning another of those three last-mentioned persons) and they (meaning, &c.) are arrested every day, &c. to bail one another, and pay nobody, so now I (meaning himself said defendant) have done my (meaning his said defendant's) part; and if you (meaning said M. H.) are not the man it (meaning that letter or libel) was designed for, pray burn it (meaning said letter or libel), and if you (meaning said M. H.) take the hint burn it, (meaning said letter or libel) for the writer of said letter or libel is neither to get nor lose by it, so farewell:" And said defendant, on same day and year aforesaid, at London, &c. aforesaid, wrongfully, falsely, and maliciously sent, and caused to be sent the said libel in the form and manner of a letter, unto the said M. H. to his house at Nottingham aforesaid, and the same was, by means of such sending thereof, received, opened, and read by the said M. H. as thereby published by said defendant to said M. H.; by reason and means of the writing and publishing of which said false, fictitious, scandalous libel, and libellous matters, said plaintiff is not only much hurt and prejudiced in his good name, fame, credit, and esteem in his aforesaid business, but also is fallen into great diffidence and discredit amongst his creditors and other worthy subjects of this realm with whom he had dealt and traded in his aforesaid business, and of whom he the said plaintiff was accustomed to buy sundry goods and merchandizes in his aforesaid business on credit, without ready money, and especially the said M. H. insomuch that those creditors and other subjects of this realm, and especially the said M. H. on occasion of the writing and publishing the said libel, have altogether refused, and still do refuse to buy or sell, or have any thing to do with plaintiff in his aforesaid business.

Drawn by MR. WARREN.



Declaration for
a libel in
a newspaper a-
gainst plaintiffs,
who were coal
of coals from a
ed to another
of the peace for

LONDON, to wit: W. S. and J. H. complain of J. M.; for that whereas they the said plaintiffs now are, and have always hitherto been good and honest subjects of this realm, and of good merchants, accusing them of selling coals short of measure, and that they took a sack quantity that had been landed at the plaintiff's wharf, in order to their being carted to another place, and that on an action being brought, and a complaint being made to a justice of the peace for the offences, they endeavoured to compromise the same.

name,

name, fame, credit, and reputation: And whereas they the said plaintiffs long before, and at the said several and respective times of the composing, writing, printing, and publishing of the several false, scandalous, and malicious libels hereinafter mentioned and set forth, exercised, and carried on the trade and business of coal merchants in partnership together in a great and extensive way, at a certain wharf of them the said plaintiffs, situate at a certain place called Puddle Dock, in London aforesaid, and during all that time exercised and carried on their said trade and business with the greatest honesty, fairness, and integrity, always giving and delivering to their respective customers their full, due, and proper quantity and measure of coals by them respectively bought and agreed for, without being guilty, or suspected of being guilty of any the least fraud or dishonesty towards their said customers, or any or either of them: And whereas before and at the several respective times of the composing, writing, printing, and publishing of the several false, scandalous, and malicious libels hereafter mentioned, they the said plaintiffs were used and accustomed to land, wharf, and cart coals for other persons at and from their said wharf, for wharfage, cartage, and reward to them the said plaintiffs on that occasion, and always during all that time sent away and delivered from their said wharf the whole of such coals so landed and wharfed thereat, for such other persons as aforesaid, without at any time embezzling, retaining, or keeping to their own use any part of such coals: And whereas before the composing, &c. of the false, &c. libel hereafter next mentioned, a certain parcel or quantity of coals had been and were bought of them the said plaintiffs in the course of their said trade and business of coal merchants, and had been and were afterwards delivered to and for one J. D. and one J. B. at a certain place called the Bridge Yard, in the borough of S. in the county of S. and a certain other parcel or quantity of coals had been and were sold by one H. S. to one J. C. and such last mentioned coals had been and were landed and wharfed by him the said H. S. at the wharf of the said plaintiffs, to be by them carted from thence for him the said H. S. to the said J. C. the aforesaid buyer or purchaser thereof, and such coals were afterwards, accordingly carted from the said wharf of them the said plaintiffs, and the said W. S. (one of the plaintiffs) was present at such carting thereof, and no fraud whatsoever was then and there committed or attempted to be committed or practised by them the said plaintiffs, or by either of them, or by any or either of their servants, with respect to such coals, and the said coals so delivered to and for the said J. D. and J. B. as aforesaid, had been and were duly and justly measured and delivered by them the said plaintiffs according to the terms of the sale thereof, but notwithstanding such premises, a certain action or suit had been and was, before the composing, &c. of the false, &c. libel hereafter mentioned, unjustly brought against them the said plaintiffs in the court of our lord the king, before the king himself, for the recovery of a certain penalty alleged to have been incurred by them the said plaintiffs, for not
justly,

(1) "publish-
ed"

(2) "to the te-
nor and effect
following,"

justly, and without fraud, delivering the said coals so delivered to the said J. D. and J. B. as aforesaid, by and according to such measure and quantity as the same were alledged to have been sold by, but only a much less quantity, and a certain complaint had also been made by the said J. C. to and before N. N. esquire, as one of the justices of the peace of our lord the now king in and for the said city of L. against a certain then servant of them the said plaintiffs, for taking away a certain part, to wit, one sack of the said coals so landed and wharfed at the said wharf of them the said plaintiffs for the said J. H. as aforesaid, and so by him sold to the said J. C. as aforesaid, and the said action or suit so brought against them the said plaintiff as aforesaid, was at the time of the composing, &c. of the false, &c. libel hereafter next mentioned and set forth, depending and undetermined, and the said plaintiff had by no means compromised or offered to compromise the same, but on the contrary intended to defend, and were then defending the same not only with a view to their acquittal of the premises charged upon them in the same, but to vindicate their characters to the public, and to evince such actions being wholly groundless and without foundation, to wit, at, &c.; yet said defendant contriving and maliciously intending wrongfully and injuriously to defame the said plaintiffs, and to injure and damnify them in their said trade and business of coal merchants, and also in their said business of wharfing and carting coals for others, and in their credit and reputation therein, and to cause it to be believed and suspected that they were dishonest and unfair traders in their said trade and business, and that there was a ground and foundation for the said action so brought against them as aforesaid, and that they had been guilty of the fraud thereby imputed to them, and also that they had attempted and endeavoured to be guilty of frauds as to the said coals so sold to the said J. C. as aforesaid, and so wharfed at and carted from their said wharf as aforesaid, † he the said defendant heretofore, to wit, on, &c. at, &c. did falsely, &c. *compose, &c.* and cause and procured to be *composed, &c.* (1) in a certain common and public newspaper of that day called the General Advertiser, a certain false, &c. libel of and concerning said plaintiffs in their said trade and business, *and of and concerning said action so brought against them as aforesaid, and the grounds or pretended cause thereof, and also of and concerning the said complaint so made against such servant of the said plaintiffs as aforesaid,* containing therein the false, &c. matter following of and concerning them the said plaintiffs in their said trade and business (2), *and of and concerning such other circumstances as aforesaid,* that is to say, [here set out the libel with proper inuendoes verbatim, as the smallest variance would be fatal. The purport of the libel was, that the plaintiffs had sold to J. D. and J. B. coals short of measure, and that they had ordered their servant to take a sack out of the coals sold by H. S. to J. C. and that they had endeavoured to compromise the action and complaint that had been brought and made against them]: And whereas the said plaintiffs in fact further say,

+ 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

say, that the said defendant further contriving, &c. to defame them the said plaintiffs, and to injure and damnify them in their aforesaid trade and business, and in their credit and reputation therein, and to cause it to be believed and suspected that they were dishonest and unfair traders in their said trade and business, he the said defendant heretofore, to wit, on, &c. &c. [finish this Count from this mark † same as the first, only omitting what is in Italic, and inserting what is in margin:] there was also some small alteration in the inuendoes of the libel: And whereas the said plaintiffs so ^{3d Count.} being such coal merchants as aforesaid, and so exercising, &c. in partnership together as aforesaid, they the said plaintiffs, before the composing, &c. libel hereafter next mentioned, had, in the course of their said trade and business, sold a certain other parcel or quantity of coals which were delivered to and for the said J. D. and J. B. at the said house called the Bridge House hereinbefore mentioned, and on that occasion they the said plaintiffs behaved with the greatest honesty and fairness, and delivered the full and whole quantity of coals so bought of them as last aforesaid, to wit, at, &c.; yet the said defendant further contriving †, &c. the said plaintiffs in their said trade and business of coal merchants so by them carried on in partnership together as aforesaid, and in their credit and reputation therein, he the said defendant heretofore, to wit, on, &c. at, &c. did falsely, &c. compose, &c. and cause and procure to be published a certain other false, &c. libel of and concerning the said plaintiffs in their said trade and business of coal merchants so by them carried on in partnership together as aforesaid, containing therein certain false, malicious, and libellous matter of and concerning them the said plaintiffs in their said trade and business of coal merchants so by them carried on in partnership together as aforesaid, to the tenor and effect following, that is to say [here set out that part of the libel relating to the coals sold to J. D. and J. B. being short of measure:] And the plaintiff in fact further saith, that ^{4th Count.} the said defendant further contriving, &c. &c. [Same as last Count from this mark †, only the libel was set out more general, and then conclude thus]; by reason and means of the composing, writing, &c. of which said several false, &c. libels and libellous matter hereinbefore mentioned and set forth of and concerning the said plaintiffs, they the said plaintiffs were, have been, and are greatly prejudiced and injured in their said trade and business so by them carried on and exercised in partnership together as aforesaid, and in their credit, character, and reputation therein, to wit, at, &c. Damages five thousand pounds.

V. LAWES.

1st, Not Guilty of the premises: And for further plea in this Plea that behalf as to the first, second, and third Counts of the said declaration, the said defendant, by leave of, &c. *actio non*; because he says, ^{the contents of the libel are not true.} that at the time of the composing, writing, and publishing, and causing and procuring to be composed, &c. the said supposed libel in the said first Count of the said declaration mentioned, and at the time of the publishing, and causing and procuring to be published the

the said supposed libel in the second Count of the said declaration mentioned, and also at the time of the composing, writing, and publishing, and causing and procuring to be published the said supposed libel in the third Count of the said declaration mentioned [it was exceeding difficult, &c. &c. &c.]: And the said defendant further says, that at the several times in the said first, second, and third Counts of the said declaration mentioned [it must have been allowed that to conceal a fraud, &c. as in the libel to the end]; then say, for which reasons he the said defendant, at the times in the said first Count of the said declaration mentioned, did compose, &c. and did cause, &c. the said supposed libel in the said first Count of the said declaration mentioned, and at the said time when, &c. in the second Count of, &c. &c. and also at the said time when, &c. in the third Count of the said declaration mentioned, did compose, &c. &c. as he lawfully might for the causes aforesaid; and this, &c. wherefore, &c. if, &c.: And for further plea in this behalf, as to the last Count of the said declaration, the said defendant, by like leave, &c. *actio non*; because he saith, that at the time of the composing, &c. and causing, &c. the said supposed libel in the said last Count of the said declaration mentioned, and thereby supposed to have been composed, &c. and caused, &c. by him the said defendant as aforesaid, they the said plaintiffs had before then sold and delivered to one J. D. and J. B. a certain quantity or parcel of coals as and for ten chaldron of coals pool measure, to wit, at, &c.: And the said defendant further says, that upon remeasurement of such coals, the same proved to be no more than nine chaldrons and a quarter, or a deficiency of forty five bushels, to wit, at, &c. for which reason he the said defendant, at the said time in the last Count of the said declaration mentioned, did compose, &c. and cause, &c. the said supposed libel in the last Count of the said declaration mentioned, as he lawfully might for the cause aforesaid, to wit, at, &c.; and this, &c.; wherefore, &c. if, &c.

W. BOLTON.

Replication
thereto, *de in-*
juris sua, &c.
published the
libel.

And the said plaintiffs, as to the said plea of the said defendant by him secondly above pleaded in bar, as to the first, second, and third Counts of the said declaration, say, that they the said plaintiffs ought not to be barred from having and maintaining their aforesaid action thereof against him; because they say, that the said defendant, of his own wrong, and without any such cause or reason as is and are by him above in his said second plea in that behalf alledged, did, at the said time when, &c. in the said first Count of the said declaration mentioned, compose, &c. and cause, &c. the said libel in the said first Count of the said declaration mentioned, and at the said time when, &c. in the said second Count of the said declaration mentioned, did publish and cause, &c. the said libel in the said second Count of the said declaration mentioned, and at the said time when, &c. in the said third Count of the said declaration mentioned, did compose, &c. the said libel in the said third Count of the said declaration mentioned, to wit, at, &c. in manner

manner and form as the said plaintiffs have above thereof complained against him; and this they pray may be enquired of by the country, and the said defendant doth the like, &c. : And as to the said plea of the said defendant by him thirdly, &c. *precludi non*; because they say, that the said defendant, at the said time when, &c. in the said last Count of the said declaration mentioned, to wit, at, &c. of his own wrong, and without any such cause or reason as is by him in his said third plea in that behalf alledged, did compose, &c. and cause, &c. the said libel in the said last Count of the said declaration mentioned, in manner and form, &c.; and this, &c. therefore as well, &c.

V. LAWES.

MIDDLESEX, to wit. The right honourable Augustus Declaration on a John Hervey complains of William Griffin being, &c. &c.; for libel against one that whereas he the said Augustus now is a good, true, honest, of the lords of just, and faithful subject of this realm, and as such hath always the admiralty from his nativity hitherto behaved and governed himself, and has fellow in Ireland, for all the time aforesaid been held and reputed to be a man of good importing that name, fame, and credit, and during all the time aforesaid hath by plaintiff's been and still is a single and unmarried man, to wit, at Westminster, conduct he had in the county of Middlesex aforesaid: And whereas the said Augustus, before and at the time of the printing and publishing of Morning Post, the several false, scandalous, malicious, and infamous libels hereafter mentioned, was, and from thence hitherto hath been, and still is one of the grooms or gentlemen of the bed-chamber of and to our sovereign lord the now king, and also one of the commissioners for executing the office of high admiral of Great Britain, and also one of the privy counsellors of our said sovereign lord the now king for his kingdom of Ireland, to wit, at W. aforesaid; by means whereof the said Augustus, before the printing and publishing of the said several false, scandalous, infamous, and malicious libels hereafter mentioned, had deservedly gained the good opinion as well of our sovereign lord the now king as of divers good and worthy subjects of this realm, to wit, at Westminster aforesaid; yet the said William, well knowing all and singular the premises aforesaid, but contriving and maliciously intending wrongly and unjustly to injure the said Augustus in his aforesaid good name, fame, and credit, and to bring him into public scandal, contempt, ignominy, and disgrace, and to cause it to be credited and believed, that our said sovereign lord the now king had dismissed and discharged the said Augustus from the aforesaid office which he so held and enjoyed from and under our said lord the king as aforesaid, on the fifth of December A. D. 1774, to wit, at Westminster aforesaid, did falsely and maliciously, wilfully and designedly print and publish, and falsely and maliciously, wilfully and designedly cause to be printed and published in a certain common public newspaper, commonly called the Morning Post and Daily Advertiser, a certain false, scandalous, infamous, and malicious libel of and concerning the said Augustus, containing therein the false, scandalous, infamous, and malicious matter following of and concerning

cerning the said Augustus, that is to say, "The very celebrated double married dutchess (meaning a certain person commonly called the dutchess of Kingston) who has long been the subject of conversation in this kingdom (meaning the kingdom of England, and now the admired English resident of Rome), is likely to be stripped of every thing that can administer to her vanity, or the support of her extravagance. We find it is now fully proved that she was absolutely sold to a late deceased duke (meaning the duke of K. now deceased) for eleven thousand pounds, and that the authenticity of her former marriage has been proved beyond the probability of a doubt. His majesty (meaning our present sovereign lord the now king), looking upon the principal instrument (meaning the said Augustus) of this infamous transaction with abhorrence, has, to his (meaning our sovereign lord the king) infinite honour, informed this wise salesman (meaning the said Augustus) in person, that he (again meaning our said lord the king) has no further need of his (meaning the said Augustus's) service at St. James's, (meaning at the palace of our said lord the king called St. James's) in consequence of which the honourable gentleman (meaning the said Augustus) turned upon his (meaning the said Augustus's) heel, and retired." [A 2d Count as first, leaving out the inducement, saying, that he caused to be printed and published; 3d Count as second, that he published only; 4th Count, that he caused to be published].

C. RUNNINGTON,

Upon the trial plaintiff recovered against defendant three hundred pounds damages.

For publishing
a libel against
the plaintiff a
parson, whereby
he was dismis-
ed from his cu-
racy.

HEREFORDSHIRE, to wit. Thomas Moufe, late of, &c. and Richard Bouse, late of, &c. were attached to answer unto Rees Pounce, &c.; for that whereas the said Rees now is a good, true, honest, and worthy subject of this realm, and as such hath always behaved and governed himself, and until the publishing of the several false, scandalous, and malicious libels hereafter mentioned, was always esteemed and reputed to be a man of good name, fame, credit, and reputation, and was a person of decent and becoming manners and behaviour: And whereas the said Rees, before and at the several and respective times of the publishing of the several false, scandalous, and malicious libels hereafter mentioned, was a clerk or clergyman of the church of England as by law established in holy orders, and was during all that time curate of and to one T. W. then and still being the rector of the rectory of the parish of T. in the said county, in the diocese of the right honourable lord James Beauclerk, lord bishop of Hereford, at and for a certain yearly stipend or salary payable to him the said Rees for his so officiating as such curate as aforesaid, and during all the said time of his so officiating as such curate in the said parish of T. faithfully observed and discharged his duty as such curate, and behaved and conducted himself with decency and decorum, and in a manner suitable and proper to his said professional character of a clergyman, and his function and situation as such curate

curate of and within the said parish of T. to wit, at, &c.; yet the said Thomas and Richard maliciously intending to injure and defame him the said Rees, and to cause him to be dismissed and discharged from his said curacy or employment of curate of and within the said parish of T. in the county aforesaid, they the said Thomas and Richard heretofore, to wit, on, &c. did falsely and maliciously publish, and cause and procure to be published a certain false, scandalous, and malicious libel of and concerning the said Rees as such curate of and within the said parish as aforesaid, in the form and manner of, &c. as then and there being a representation of the principal inhabitants of the said parish of T. in the county of S. and diocese of Hereford, to the said bishop of the said diocese containing therein, and thereby representing and shewing to the said bishop the false, scandalous, libellous, and defamatory matter following of and concerning the said Rees, as such curate of and within the said parish of T. as aforesaid, that is to say [here recite the libel, and go on]: And the said Thomas and Richard, on, &c. at, &c. wrongfully, falsely, and maliciously sent and caused the said libel to be sent to the said bishop, and the same was, by means of such sending thereof, then and there received and read by the said bishop as published by them the said Thomas and Richard; by reason and means of the publishing of which said false, scandalous, and malicious libel and libellous matter of and concerning the said Rees, in manner and by the means aforesaid, the said Rees is not only hurt and injured in his good name, fame, credit, and reputation, but became and was afterwards, and after the said publishing of the said libel and libellous matter, to wit, on, &c. discharged from his said curacy or employment of curate of and within the said parish of T. and so from thence hitherto hath remained and continued, and will still remain and continue, and hath in consequence thereof ever since his said dismissal from his said curacy or employment as curate, lost and been deprived of all salary, benefit, and advantage that would and might otherwise have arisen and accrued to him from the same, and is reduced to a state of poverty and misery, and so is likely to continue, to wit, at, &c. : And the said Rees in fact further saith, &c. &c. &c.

V. LAWES.

LONDON, to wit. Daniel Surly complains of Thomas Tort against an Chimcham, gentleman, one of the attornies of the court of attorney, for our lord the now king, before the king himself, being present publishing a libel, containing here in court in his own proper person, of a plea of trespass on words of perjury the case; for that whereas the said D. now is a good, true, honest, of a wine broker, thereby just, and faithful subject of this realm, and as such hath always, &c. from the time of his nativity, hitherto behaved and governed himself, and until the writing and publishing of the false, scandalous, and malicious libel hereinafter mentioned by the said Thomas of and concerning the said D. was always reputed, esteemed, and accepted by and among all his neighbours, and

other good and worthy subjects of this realm to whom he was in any wise known, to be a person of good name, fame, and credit, to wit, at L. aforesaid, in the parish of Saint Mary le Bow, in the ward of Cheap: And whereas the said D. before and at the time of the writing and publishing the said libel was, and from thence hitherto hath been, and still is a wine broker, and the business of a wine broker hath, for and during all that time, used, exercised, followed, and carried on, and still doth use, exercise, follow, and carry on, in a certain street called Great Tower Street, in L. aforesaid, and the said D. hath not ever been guilty, or until the time of writing and publishing of the said libel been suspected to have been guilty of perjury, or any other such hurtful crime, by means of which said several premises he the said D. before the writing and publishing of the said libel, had not only deservedly gained the good opinion and credit of all his neighbours and other good and worthy subjects of this realm to whom he was in any wise known, but had also thereby acquired, and was then daily and honestly acquiring sundry great gains and profits in his aforesaid business to the comfortable support of himself and his family, and to the great increase of his riches, to wit, at L. aforesaid, in the parish and ward aforesaid; yet the said Thomas, well knowing all and singular the premises, but greatly envying the happy state and condition of the said D. and contriving and wickedly and maliciously intending to injure the said D. in his aforesaid good name, fame, and credit, and in his business aforesaid, and to bring him into public scandal, infamy, and disgrace with and amongst all his neighbours and other good and worthy subjects of this realm to whom he was in any wise known, and to cause it to be suspected and believed by those neighbours and subjects, that he the said D. had been, and was guilty of perjury; and to subject him to the pains and penalties by the laws of this kingdom made and provided against and inflicted on persons guilty of perjury, and to vex, harass, oppress, impoverish, and wholly ruin him the said D. heretofore, to wit, on the sixth of May, A. D. 1789, at London aforesaid, in the parish and ward aforesaid, did falsely and wickedly, wilfully and designedly write and publish, and cause and procure to be written and published a certain false, scandalous, and malicious libel of and concerning the said D. in the form of a bequest to him the said D. by and in the last will and testament of one Richard Jones, the father in law of the said D. now deceased, in which said libel there was and is contained this false, scandalous, and malicious matter following: that is to say, "I (meaning the said Richard Jones) give and bequeath unto my *perjured* son-in-law Daniel Surly, of Great Tower Street, London, wine broker, (meaning the said Daniel) the sum of one shilling, at the same time I (again meaning the said R. J.) pray God to forgive him" (meaning the said D. and thereby then and there meaning that the said D. had been and was guilty of perjury;) by means of the writing and publishing of which said false, scandalous, and malicious libel by the said Thomas of and concerning the said D. he the said D. hath

hath been, and is greatly injured in his aforesaid good name, fame, and credit, and brought into public scandal, infamy, and disgrace with and amongst all his neighbours and other good and worthy subjects of this realm, insomuch that divers of those neighbours and subjects, to whom the innocence and integrity of the said D. in the premises were unknown, have, on occasion of the writing and publishing of the said libel, from thence hitherto suspected and believed, and still do suspect and believe the said D. to have been, and to be a person guilty of perjury; and thereby he the said D. hath been, and is greatly injured in his aforesaid business, and otherwise, to wit, at L. aforesaid, in the parish and ward aforesaid, to the damage of the said D. of one thousand pounds; and therefore he prays relief, &c. Pledges, &c.

Drawn by MR. TIDD.

It will be necessary in this case to prove the publication of the libel by the defendant; but that may be done by proving that he read it over.

And the said Thomas, in his own proper person, comes and defends the wrong and injury, when, &c. and says, that the said D. ought not to have or maintain his aforesaid action thereof against him, because he saith that he the said Thomas, before and at the time of the writing and publishing the said supposed libellous matter in the said bill mentioned of and concerning the said D. had been, and was retained and employed by the said R. Jones, deceased, in his lifetime, as an attorney at law, to prepare the last will and testament of the said R. J.; and that he did accordingly, as such attorney at law, upon such retainer and employment of the said R. J. prepare the last will and testament of him the said R. J. and that the supposed libellous matter in the said bill mentioned of and concerning the said D. was written and published by him the said Thomas in the said last will and testament of the said R. J. deceased, by the express order, authority, and directions of the said R. J. deceased, to him the said Thomas as such attorney as aforesaid in that behalf given, and that he the said Thomas never wrote or published the said supposed libellous matter in the said bill mentioned of and concerning the said D. but in the last will and testament of the said R. J. as the attorney of or for the said R. J. deceased, and by such his express order, authority, and directions to him in that behalf given as aforesaid; and this he the said Thomas is ready to verify; wherefore he prays judgment if the said D. ought to have or maintain his aforesaid action thereof against him, &c.

Plea, that words were written by defendant in a will which defendant prepared by order of testator, and on his retainer.

S. SHEPHERD.

And the said D. says that the said plea of the said Thomas, and the matters thereon contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar the said D. from having his aforesaid action maintained against the said J. and that he the said D. is not under any necessity, nor in any wise bound by the law of the land to answer the same; and

this he is ready to verify; wherefore, for want of a sufficient plea in this behalf, he prays judgment and his damages, by reason of the premises in the declaration mentioned, to be adjudged to him, &c.: And for causes of demurrer in law, the said D. according to the form of the statute in such cases made and provided, sets down and shews to the court here the following, viz. for that the said Thomas hath not in his said plea averred or shewn any venue or place where he was retained and employed by the said R. J. deceased, for the purpose therein mentioned, or where such order, authority, and directions were given as are in the said plea alledged to have been given by the said R. J. to the said Thomas; and also for that the matter so pleaded in bar amounts only to the general issue, and therefore ought not to have been specially set forth; and for that no material or conclusive issue can be taken upon the said plea; and the said plea is in various other respects insufficient, defective, and informal.

S. MARRYAT.

Having no instance to the contrary, I take it for granted that the defendant had in truth such directions from his client as he alledges; but it appears to me his plea is not only exceptionable on the grounds I have assigned as causes of demurrer, but that it is also *substantially* bad.—I am not unapprized of the case of *Hargrave v. Lord Breton*, 4 Burr. 2422; but think it materially distinguishable from this. The consequence of filing a *special* demurrer will probably be, that defendant will change his plea for the general issue, upon which it will be incumbent on the plaintiff to give evidence

of the publication of the libel by the defendant, which at present stands admitted. If, therefore, the proof of the publication be attended with any difficulty, I think it will be advisable for the plaintiff to strike out the *special* causes, and take the sense of the court upon the real question, on a *general* demurrer; or else before he files the *special* one to serve the defendant with a rule to abide by his plea afterwards, which the court will hardly suffer him to change, but on the terms of his consenting to admit the publication.

S. MARRYAT.

MALICIOUS PROSECUTION.

Declaration, the defendant had sued out a writ of *latitas* against the plaintiff, and before the return of that writ had likewise sued out a bill of Middlesex, and arrested the plaintiff

LONDON, to wit, Richard Berry, late of, &c. and Peter M'Gowan, late of, &c. were attached, &c. unto James Allaway, in, &c. (1) *that whereas he the said James being indebted to the said Richard in a certain sum of money, to wit, the sum of twelve pounds of lawful, &c. he the said Richard, for the recovery of such debt or sum of money, and for no other cause of action or suit whatsoever, heretofore, to wit, on, &c. by the said Peter then and there being his attorney at law, on that occasion sued and prosecuted out of the (2) court of our lord the now king, before the king* upon the same; the plaintiff paid the debt, and procured his discharge; the defendant afterwards had the plaintiff arrested by virtue of the writ of *latitas*, and thereby put the plaintiff to great expence, &c.

(1) " And whereas the said Richard"

(2) " said"

himself,

himself, against him the said James (3) a certain writ of our said lord the king called a *latitat*, directed to the sheriffs of London, *directing* (4) them to take the said James if he should be found in their bailiwick, and to safely keep him, so that they might have his body before our said lord the king at Westminster on, &c. then next and now last past to answer THE SAID RICHARD IN AND to a certain plea and bill in the said (5) writ *mentioned*, to wit, in a plea of trespass, and also to a bill of the said Richard against the said James for twenty-four pounds upon promises according to the custom of the said court of our said lord the king, before the king himself to be exhibited, and that they the said sheriffs should have there then that writ (6): *And the said Richard also* afterwards, and before the return (7) of the said writ of *latitat*, to wit, on, &c. did by the said Peter the attorney at law of him the said Richard on that occasion sue and prosecute out of the said court of our said lord the king, before the king himself, for the recovery of the said debt or sum of money so to him due and owing as aforesaid, a certain process of our said lord the king at, W. on, &c. then next and now last past; and having so sued out such writ and precept as aforesaid, did, by the said Peter his attorney as aforesaid, cause the same to be severally indorsed and marked for bail for twelve pounds and upwards, and did also cause the said James to be afterwards and before the return of the said precept arrested and taken into custody under and by virtue of such precept for the said debt or sum of money for which the same was so sued out and issued as aforesaid, to wit, at, &c.: And the said James in fact further saith, that he the said James having been arrested under and by virtue of the precept called a bill of Middlesex as aforesaid for the said debt or sum of money so from him due and owing as aforesaid, he the said James, after the making of such arrest, and before the arrest of him the said James under and by virtue of the said writ of *latitat* as hereafter mentioned, to wit, on, &c. in, &c. paid and caused to be paid, that is to say, to the said Peter as such attorney as aforesaid of and for the said Richard, a certain large sum of money, to wit, the sum of fourteen pounds, in full satisfaction and discharge as well of the said debt or sum of money for which the said James was so sued as aforesaid as of the costs of him the said Richard: Yet the said James in fact further saith, that the said Richard and Peter, contriving and maliciously intending to hurt, injure, and prejudice him the said James, afterwards, and after the said Richard had been and was so paid and satisfied the said debt or sum of money for which he so sued the said James as aforesaid, to wit, on, &c. wrongfully, unjustly, and maliciously, and notwithstanding such payment and discharge of the said debt or sum of money for which the said writ of *latitat* was so issued out and prosecuted as aforesaid, and notwithstanding such previous arrest as aforesaid for the same by virtue of the aforesaid precept called a bill of Middlesex, caused and procured the said James to be again arrested and taken into custody by his body for the said debt or sum of money by the said sheriffs under and by virtue of the said writ

(3) "for the recovery of a certain other sum of money, to wit, THE FURTHER SUM OF, &c. then and there being due and owing from the said James to him the said Richard"

(4) "commanding"

(5) "last mentioned specified"

(6) "which said last mentioned writ was then and there marked and indorsed for bail for 12l. and upwards; and being so indorsed and marked for bail was"

(7) "thereof"

(8) "also further"
ad Count.

(9) "and satisfied"

(10) "not to have suffered or permitted the said James to have been afterwards arrested for the said last-mentioned debt or sum of money under and by virtue of the said last-mentioned writ, but should have prevented such arrest from being made"

(11) "prevented such arrest, and well knew and had notice of the said debt for which the said last-mentioned writ was so sued out as aforesaid having been paid and satisfied as aforesaid,"

(12) "prevent or hinder the said James from being arrested and taken into custody by virtue of the said"

of *latitat*, and to be kept and detained in custody under that arrest by virtue of the said writ of *latitat*, and under colour and pretence of the said cause of action so therein specified as aforesaid, being still existing for a long space of time, to wit, for the space of twelve hours then next following: Whereby and by means of which said several premises he the said James was not only imprisoned in manner and for the time aforesaid, during all which he suffered and underwent great anxiety of mind, and was hindered and prevented from following and transacting his necessary and lawful affairs and business, but was also forced and obliged to lay out and expend divers sums of money, in the whole amounting to a large sum of money, to wit, the sum of five pounds, in and about the obtaining his release and discharge from his said imprisonment, and was, *and hath been, and still is* (8) *greatly* injured and damaged in his credit, character, and reputation, to wit, at, &c.: And afterwards, &c. &c. &c. [go on as in the last Count, omitting the parts in *Italic*, and inserting what is in the margin, till you come to this mark † in the margin, when proceed as follows], delivered BY THE SAID PETER AS SUCH ATTORNEY OF THE SAID RICHARD to the said sheriffs of London, to be by them executed in due form of law, TO WIT, AT, &c.: And the said James in fact further saith, that after such delivery of the said last-mentioned writ to the said sheriff of London as aforesaid, to be executed as aforesaid, and before the arrest of him the said James under and by virtue of the said last-mentioned writ as hereafter mentioned, to wit, on, &c. he the said James paid (9) TO THE SAID PETER AS SUCH ATTORNEY OF AND FOR THE SAID RICHARD AS AFORESAID, TO AND FOR THE USE OF HIM THE SAID RICHARD, the said debt or sum of money for which the said last-mentioned writ OF LATITAT was so sued out as aforesaid: And although the said Richard being then and there plaintiff in the said last-mentioned action and suit, and the said Peter being then and there attorney of and for the said Richard in such action or suit, ought (10) TO HAVE THEREUPON FORTHWITH COUNTERMANDED THE EXECUTION OF THE SAID LAST-MENTIONED WRIT BY THE SAID SHERIFFS OF LONDON TO WHOM THE SAME HAD BEEN AND WAS SO DELIVERED FOR EXECUTION AS AFORESAID, SO AS TO HAVE PREVENTED THE SAID JAMES FROM BEING TAKEN OR ARRESTED BY VIRTUE OF THE SAME: And although the said Richard and Peter could and might have accordingly (11) COUNTERMANDED THE EXECUTION OF THE SAID LAST-MENTIONED WRIT, to wit, at, &c. yet the said Richard and Peter, disregarding their duty in that behalf, AND CONTRIVING and maliciously intending to injure and prejudice him the said James, did not, nor did either of them then and there (12) FORTHWITH OR OTHERWISE COUNTERMAND THE

EXECUTION OF THE SAID last-mentioned writ OF LATITAT BY THE SAID SHERIFFS OF L. but wholly neglected, and each of them did neglect so to do, (13) WHEREBY THE SAID JAMES WAS AFTERWARDS, AND AFTER HE HAD SO paid and satisfied (14) the said debt for which the said last-mentioned writ was so sued out as aforesaid, AND BEFORE THE TIME APPOINTED FOR THE SAID LAST-MENTIONED WRIT, TO WIT, ON, &c. ARRESTED AND TAKEN INTO CUSTODY BY HIS BODY by the said sheriffs of London under and by virtue of the said last-mentioned writ, and UNDER COLOUR AND PRETENCE OF THE CAUSE AND ACTION THEREIN SPECIFIED, AND ON THAT OCCASION WAS (15) kept and detained (16) in custody (17) FROM THENCE for a long space of time, to wit, for the space of twelve hours then next following [conclude as in first Count]: And whereas [3d Count same as the 2d, inserting what is in the margin from the beginning of the 2d Count, and leaving out the parts in small capitals, and conclude as before; damages one thousand pounds.]

(13) "and on the contrary thereof afterwards and after the said debt for which such writ was so sued out as aforesaid had been"
 (14) "as aforesaid, and before the return of the said last-mentioned writ, to wit, on, &c."
 (15) "there"
 (16) "so"
 (17) "and under such arrest as last aforesaid"

V. LAWES.

MIDDLESEX, to wit. Charles Legg complains of T. T. D. H. and W. D. being, &c.; for that whereas the said C. at the time of suing forth the commission of bankruptcy hereinafter next mentioned against the said Charles was a farmer, and held as tenant thereof a large farm, consisting of divers, to wit, five hundred acres of land, situate and being at the parish of in the county of Surry, and was also possessed of a large stock upon the said farm, and of divers goods and chattels of him the said Charles, being in the whole of the value of four thousand pounds; and the said Charles was happily and comfortably situated in and upon the said farm, and was going on therein in a very prosperous and thriving way, and had not at any time before or at the time of suing forth the commission of bankruptcy hereafter mentioned committed any act or acts of bankruptcy whatsoever, nor was a trader within the bankrupt laws, nor in any ways subject or liable to have any commission of bankruptcy issued forth against him, but was in great and good reputation and credit amongst all persons trading and dealing with him in his said business; yet the said defendant well knowing all and singular the premises aforesaid, but falsely, wickedly, and maliciously contriving and intending unjustly to aggravate, injure, and oppress the said Charles, and to take away his credit, esteem, and reputation amongst his friends, neighbours, and acquaintance, and all other his majesty's subjects, and to procure his said farm, stock, goods, and chattels to be seized and taken from him under the pretence and colour of the laws of this realm touching bankrupts, and to restrain and prevent the said Charles from further following, using, and exercising his said employment of a farmer, and to restrain and prevent the several and respective persons

Declaration for maliciously suing out a commission of bankruptcy against plaintiff, who was a farmer, which was afterwards superseded; *per quod*, plaintiff was turned out of his farm, and his stock sold at an undervalue, and he was entirely ruined.

sons who were then debtors to the said Charles from paying their respective debts due and owing from them respectively to him, and to restrain and incapacitate the said Charles from receiving and getting in the same, and to put the said C. to great expences of his money, and falsely and maliciously to cause and procure him to be deemed, esteemed, and adjudged to be a bankrupt, and to ruin him, on the sixth of January 1776, at Westminster, in the said county, falsely and maliciously, and without any reasonable or probable cause whatsoever, sued and prosecuted, and caused to be sued and prosecuted out of the said court of our said lord the king of his chancery, the said court then and still being held at Westminster, in the said county, a certain commission of bankruptcy of our said lord the king, sealed with the seal of Great Britain, bearing date at Westminster, the said sixth of January, in the said sixteenth year of the reign of his said majesty, against the said Charles, directed to A. B. gentleman, whereby after reciting, our said lord the king being informed that the said C. using and exercising the trade of merchandize by way of bargaining, exchanging, bartering, and chevance, seeking his trade of living by bargaining and selling, did become a bankrupt within the several statutes made against bankrupts to the intent to defraud and hinder the said D. and others his creditors of their just debts and duties to them due and owing, our said sovereign lord the king, minding the due execution of the said several statutes made against bankrupts, did, by his commission under the great seal of Great Britain, bearing date at Westminster aforesaid, on the said sixth of January, in the sixteenth, &c. name, assign, appoint, constitute, and ordain the said, &c. his special commissioners, thereby giving full power and authority to them, four or three of them; to proceed according to the said statutes and all other statutes in force concerning bankrupts, not only concerning the said C. therein called the said bankrupt, his body, lands, tenements, freehold and customary goods, debts, and other things whatsoever, but also concerning all other the persons who by concealment, claim, or otherwise did or should offend touching the premises, or any part thereof, contrary to the true intent and meaning of the said statutes, to do and execute all and every thing and things whatsoever as well for and towards satisfaction and payment of the said creditors, as towards and for all other intents and purposes according to the ordinance and provision of the same statutes, willing and commanding them, four or three of them, to proceed to the execution and accomplishment of the same commission with all diligence and effect; and such proceedings were thereupon had by the said being three of the said commissioners named and authorised in and by the said commission, that afterwards, on the eighth of January 1776, at W. aforesaid, he the said C. upon the prosecution of the said T. D. and W. under colour and pretence of the said commission, was declared a bankrupt, and his said farm and all his stock, goods, and chattels, books, papers, and effects were thereupon seized and taken from him, *and himself obliged at the peril of his life to surrender*

render himself, and submit to be examined by and before the said commissioners in the said commission named, four or three of them, and to make a full discovery and disclosure of all his estate and effects before the said commissioners, four or three of them, and which the said C. for the preservation of his life, afterwards; to wit, on the twenty-eighth of February 1776; at Westminster aforesaid, accordingly did: And the said Charles further says, that the said commission of bankruptcy afterwards, to wit, on the twenty-eighth of October, in the eighteenth year, &c. at Westminster aforesaid, was duly superseded: And the said Charles further says, that by means of suing out and prosecuting the said commission of bankruptcy against the said Charles as aforesaid by the said defendants, and the several proceedings had thereon before the same could be superseded as aforesaid, the said Charles lost his credit and reputation amongst his friends, neighbours, and acquaintance, and all other his majesty's subjects to whom he was known, and lost the use, benefit, and advantage of his said farm, goods, books, and papers so seized and taken from him, and the same were sold and disposed of under the said commission afterwards, to wit, on the first of October 1776, at W. aforesaid, for a very great undervalue and price, to wit, at the value and price of three hundred and sixty-five pounds, being one thousand pounds less than the same were then worth: And the said Charles hath also by means of the premises necessarily forced and obliged to lay out and expend a large sum of money, to wit, the sum of three hundred pounds in and about the applying for and obtaining a *supersedeas* to the said commission; and the said Charles is thereby totally ruined and undone in his circumstances, to wit, at, &c. [Second Count, same as the first as far as in Italic, which leave out, and insert in its place "and also at a very great undervalue, to wit, at the undervalue of six hundred pounds," then aver the *supersedeas*, and finish as following]: And the said Charles further says, that by means of suing out and prosecuting the said commission of bankruptcy against the said Charles as aforesaid by the said defendants, he the said Charles was turned out of his said farm, and was rendered unable to gain his livelihood, and has been stripped of all his property, and has been and is entirely ruined: And the said Charles hath also by means of the premises last aforesaid been necessarily forced and obliged to lay out and expend, and hath necessarily laid out and expended a large sum of money, to wit, pounds, in and about the applying for and obtaining a *supersedeas* to the said commission, to wit, at, &c.; damages one thousand pounds.

It is not necessary to aver that the plaintiff did not commit an act of bankruptcy. Chapman v. Pickersgill, 2 Wilson 145.

ROAT-

Declaration for
charging plaintiff
with arson.

FOR that whereas the said plaintiff now is a good, &c. and as such hath, &c. and until the time of the committing of the grievance hereafter mentioned, and of the speaking, &c. by the said defendant of and concerning the said plaintiff was always reputed, &c. to be a person, &c. to wit, at, &c.: And whereas he the said plaintiff before and on, &c. and also before the committing of the grievance hereafter, &c. and the speaking, &c. of the, &c. by the said defendant of and concerning the said plaintiff, to wit, at, &c. was lawfully possessed of and in a certain messuage or dwelling-house, situate, standing, and being, &c. and also of and in a certain stock in trade, household furniture, and other property of him the said plaintiff to a large amount, to wit, &c. at, &c. stored and being in the said messuage or dwelling-house of the said plaintiff, to wit, at, &c.: And whereas the said stock in trade, household furniture, and other property of him the said plaintiff so as aforesaid being in the said messuage or dwelling-house of the said plaintiff were before and on the same day and year, to wit, on, &c. duly insured by him the said plaintiff from loss or damage by fire in a certain society or office commonly called the Sun Fire Office in London to the amount of the just and true value thereof, to wit, at, &c.: And whereas the said plaintiff so being possessed as aforesaid of and in the said messuage or dwelling-house, and of and in the said stock in trade, household furniture, and other property of him the said plaintiff in the said messuage of the said plaintiff, being as aforesaid, were so insured as aforesaid, to wit, on, &c. not only the said messuage and dwelling-house of him the said plaintiff was by mere accident and unavoidable misfortune much and greatly damaged by fire, but the said stock in trade, household furniture, and other property of him the said plaintiff so as aforesaid insured were then and there also by mere accident and unavoidable misfortune wholly burnt and consumed by fire, to wit, at, &c.: And whereas the said plaintiff by means of his said stock in trade, household furniture, and other property so insured as aforesaid being burnt and consumed by fire as aforesaid, did suffer a damage or loss to the amount or sum of six hundred and fifty-one pounds of lawful, &c. by means whereof the stock and fund of the said society were liable and subject to pay to the said plaintiff, and the said plaintiff became and was legally and justly entitled to receive of and from the said society or office the said sum of, &c. being the true and real amount of such his damage or loss as aforesaid, to wit, at, &c.: And whereas the said plaintiff hath not ever been guilty, or until the time of the committing of the grievance hereafter next mentioned, and of the speaking, &c. of the several, &c. by the said defendant of and concerning the said plaintiff been suspected to have been guilty of arson, burning of houses, felony, or fraud, or of any such hurtful crime; by means of which said several premises he the said plaintiff had before the committing, &c. and also before the speaking, &c. deservedly obtained the benevolence, &c. to wit, at, &c.; yet the said defendant well knowing

knowing all and singular, &c. but contriving, &c. not only to injure, &c. and to make it be believed and credited that the said plaintiff was and is a person guilty of arson, and to subject him to the pains and penalties, &c. but also to make it be credited and believed that the said plaintiff had been and was at the time the fire so happened as aforesaid insured at a much larger sum of money than his said stock in trade, household furniture, and other property which had been and were so insured, and had been and were so burnt and consumed as aforesaid were justly worth, and that he the said plaintiff had feloniously, voluntarily, and maliciously set fire to his said messuage or dwelling-house with intent to consume the same, and that the said plaintiff had feloniously, &c. burnt and consumed his said stock, &c. so therein being as aforesaid, with an intent, &c. and in order and on purpose to cheat and defraud the said society or office of a large sum of money beyond and more than the just and true value thereof, and to prevent and hinder the said plaintiff from reaping any benefit from his said insurance, and from receiving and from being paid by the said society or office the said damage or loss of, &c. which he the said plaintiff had so as aforesaid sustained by means and on account of the said fire, and against which he was so insured as aforesaid, and to disquiet the said plaintiff, and to make him suffer and undergo many arduous labours and troubles both of body and mind, and to wholly impoverish and ruin him, heretofore, to wit, on, &c. falsely, &c. and without, &c. made a complaint against the said plaintiff before A. B. esquire, then and still being one of the justices of our lord the now king, assigned to keep the peace of our said lord the king in and for the county of M. and also to hear and determine divers felonies, &c. committed in, &c. and then and there charged and accused him the said plaintiff, and imposed on him the crime of felony, to wit, with having feloniously, &c. set fire to his said messuage, &c. and then and there upon the said complaint so as aforesaid falsely, &c. made by the said defendant against the said plaintiff as aforesaid forced and obliged the said plaintiff to be and appear, and the said plaintiff was thereby then and there convened and obliged to appear, and did then and there appear before the said justice to answer the premises so as aforesaid, falsely, &c. laid to his charge, and the said defendant also then and there, to wit, on, &c. at, &c., falsely, &c. and without any, &c. caused and procured the said plaintiff to be examined by and before the said justice of and upon, touching and concerning the said crime so as aforesaid falsely, &c. laid to his charge and alledged against him, and to be kept and detained in custody under such examination for a long time, to wit, for, &c. then next following under colour and pretence of the said supposed crime, when in truth and in fact the said plaintiff was not nor is in anywise guilty of the said felony and premises so as aforesaid falsely, &c. by the said defendant alledged against him the said plaintiff, and so it then and there falsely appeared on the said examination of the said plaintiff to the said A. B. esquire, so being, &c. whereupon the said A. B. being,

being, &c. upon the said examination of the said plaintiff, and after he had fully heard and considered every thing that the said defendant could say or alledge against him the said plaintiff touching the said supposed crime, to wit, on, &c. at, &c. wholly acquitted and discharged the said plaintiff of and from the said supposed crime, to wit, at, &c. : And the said defendant further contriving and maliciously intending as aforesaid, heretofore, to wit, on, &c. in a certain discourse which he the said defendant then and there had with divers good and worthy subjects of this realm of and concerning the said plaintiff, and of and concerning the said fire that had so as aforesaid accidentally happened in his said messuage on, &c. then and there falsely, &c. rehearsed, proclaimed, and loudly published of and concerning the said plaintiff, in the presence and hearing of those subjects, these false, &c. &c. &c. [there were seventeen Counts nearly the same as the foregoing, that is, they were all for words]: By reason and means of which said prosecution of the said plaintiff by the said defendant in the said first Count mentioned, and the speaking, &c. of which said several false, &c. words hereinbefore mentioned by the said defendant of and concerning the said plaintiff, he the said plaintiff is not only greatly hurt and injured in his aforesaid good name, &c. and brought into public scandal, infamy, and disgrace with and amongst all his neighbours and divers other good and worthy subjects of this realm, insomuch that divers of those subjects and neighbours to whom the innocence and integrity of the plaintiff in the premises were unknown, have on occasion of the said premises suspected, and still do suspect the said plaintiff to have been and to be a person guilty of arson, and that he feloniously, &c. set fire to his said messuage, and have on that occasion from thence hitherto wholly refused, and still do daily more and more refuse to have any commerce, acquaintance, or discourse with him, or to have any thing to do with him as they were before used and accustomed to do, and would have done again had not the said plaintiff been so as aforesaid prosecuted by the said defendant, and had not the said several words been so as aforesaid spoken and published by the said defendant of and concerning him the said plaintiff, but also by reason and means and on account of the premises hereinbefore mentioned and for no other reason, by no other means, and on no other account whatsoever the said society have hitherto refused, and still do refuse to pay to the said plaintiff his said insurance, damage, or loss of, &c. which he the said plaintiff had and has so as aforesaid sustained and suffered by the means and on account of the said fire, and against which he was so insured by the said society, or any part thereof, and the same and every part thereof, on occasion and by means and on account of the premises aforesaid, remain due, owing, and unpaid to the said plaintiff; and the said plaintiff by and on account of the said premises, and on no other account whatsoever, has been hindered and prevented from recovering the same, or any part thereof, and is in great danger of wholly losing the same: And the said plaintiff also by reason of

of the premises was and has been forced and obliged to suffer and undergo, and did suffer, &c. and hath suffered, &c. many great and arduous, &c. and to lay out and expend, &c.: And the said plaintiff is also by means of the premises aforesaid greatly injured and damaged, and very much impoverished, and almost wholly ruined, to wit, at, &c.; damages two thousand pounds, &c.

C. RUNNINGTON.

SURREY, to wit. P. S. complains of J. S. being, &c.; Declaration for
for that whereas by the laws and customs of this realm no persons
whatsoever ought to be arrested and imprisoned in any personal
action at the suit of any such person without a reasonable or prob-
able cause or just pretence of action or suit for such arrest or im-
prisonment against such person so arrested or imprisoned; yet the
said defendant well knowing the premises aforesaid, but con-
triving and wickedly and falsely and maliciously intending to hurt,
injure, prejudice, and aggrieve the said plaintiff, and without
any reasonable or probable cause, or just pretence of action or
suit to arrest and imprison, and cause and procure to be arrested
and imprisoned the said plaintiff, and him to detain and cause to
be detained and imprisoned for a long time, and to deter the friends
and acquaintance of the said plaintiff from becoming bail for him
the said plaintiff, heretofore, to wit, that is to say, at the court
of record of our sovereign lord the now king of his palace of West-
minster, held at Southwark, in the county of Surrey aforesaid,
within the jurisdiction of the said court, on Friday the tenth day
of July, in the twelfth year of the reign of our lord the now king,
before William, earl Talbot, steward of the king's household, sir
Sidney Meadow, knight, marshall of the said household, and
Lefett Blackborne, esquire, steward of the said court, judges of
the said court, by virtue of the letters patent of Charles the
Second, late king of England, and bearing date at Westminster,
the fourth day of October, in the sixteenth year of his reign,
came the said defendant in his own proper person, and then and
there in the same court falsely and maliciously, and without any
just, reasonable, or probable cause, levied a plaint at the suit of
the said defendant against him the said plaintiff in a plea of tres-
pass on the case to the damage of ninety-nine shillings, and then
and there found pledges to prosecute his said plaint, to wit, John
Doe and Richard Roe: And the said defendant further falsely and
maliciously, and without any reasonable or probable cause what-
soever, afterwards, to wit, at the court of record of the said lord
the now king of his palace aforesaid, held at Southwark aforesaid,
within the county and jurisdiction aforesaid, on Friday the seven-
teenth day of July A. D. 1772, before the said then judges of
the said court of record of our said lord the now king on the said
plaint, a certain writ of our said lord the now king of *capias ad
respondendum*, in the said place against the said plaintiff, directed
to the bearers of the virges of the king's household, the officers
and

and ministers of that court, and of every of them, commanding them and every of them that they or one of them should take the said plaintiff if he should be found in the jurisdiction of the said court, and him safely keep, so that they or one of them might have his body before the judges of the said court at the then next court of the king's palace at Westminster, on Friday the twenty-fourth day of July then next following, to be held at Southwark, in the county of Surrey, to answer the said defendant of the said plea of trespass on the case, to the damage of ninety-nine shillings, and that they or one of them should have there then that writ, which said writ the said defendant then and there falsely and maliciously caused to be indorsed for bail for two pounds and upwards against the said plaintiff: And the said defendant further falsely and maliciously, and without any reasonable or probable cause whatsoever, afterwards and before the return of the said writ, to wit, on the twenty-second day of July A. D. 1772, at Southwark aforesaid, in the county of Surrey, caused and procured the said plaintiff to be arrested and taken by his body by one of the bearers of the virges of the king's household, and an officer and minister of the said court, and to be kept and detained in custody on that occasion for a long time, to wit, for the space of five months then next following, without any reasonable or probable cause whatsoever, when in truth and in fact the said defendant had not either at the time of the levying of the said plaint or at the time of the making of the said arrest and imprisonment, and detaining in prison of the said plaintiff in manner and form aforesaid made, or at any of those times any just, reasonable, or probable cause, or pretence of action or suit against the said plaintiff, whereby or for which the said plaintiff ought to have been arrested, imprisoned, or detained.

*Rough draught
of a declaration
for stopping and
advertising sil-
ver plates which
plaintiff offered
for sale to de-
fendant, and im-
posing the crime
of felony on the
plaintiff.*

LONDON, to wit. Judah Eliazer complains of George Barnett, being, &c.; for that whereas the said plaintiff now is a good, true, honest, just, and faithful subject of this realm, and as such good, true, honest, and faithful subject from the time of his nativity hitherto hath always behaved, had, and governed himself, and has for all the time aforesaid been held and reputed amongst all his neighbours and other worthy subjects of this realm to be a man of good name, fame, credit, and reputation, and has always for his lifetime past hitherto lived and continued free, untouched, unspotted, and wholly unsuspected of and from all and all manner of theft, larceny, robbery, felony, trickery, deceit, or falsehood, or any other such hurtful crime; by means of which said premises he the said plaintiff before the several grievances hereafter mentioned had deservedly obtained and got to himself the benevolence, good opinion, and credit of all persons any ways acquainted with him, and other good and worthy subjects of this realm: And whereas the said plaintiff on the twentieth day of February A. D. 1748, at L. aforesaid, in the parish
of

of Saint Mary-le-bow, in the ward of Cheap, was possessed of nine chased silver plates for tops of snuff-boxes, and was then and there well entitled to sell and dispose of the same; and being so thereof possessed, he the said plaintiff, on the same day and year, at L. aforesaid, in the parish and ward aforesaid, offered the same to sale to the said defendant, and the said defendant thereupon then and there stopped and detained the said nine chased silver plates in his custody under pretence that the same had been stolen, and not honestly come by, although the same had not been stolen, but were by the said plaintiff honestly come by; yet the said defendant, well knowing the premises, but greatly envying the happy state and condition of the said plaintiff, and contriving and maliciously intending to hurt, injure, and prejudice the said plaintiff in his good name, fame, credit, and reputation, and to cause him to be reputed to be a thief and a felon, on the twenty-second day of February A. D. 1748 aforesaid, at L. &c. aforesaid, did wickedly and maliciously, falsely, unjustly, and scandalously compose, write, print, and publish, and did cause and procure to be composed, written, printed, and published of and concerning the said plaintiff a certain wicked, infamous, scandalous, and defamatory libel of and concerning the said plaintiff in a certain public newspaper or paper of intelligence, entitled, (Number 5339) the Daily Advertiser, Monday, February the twenty-second 1748, in which said wicked, infamous, scandalous, and defamatory libel were and are contained the false, scandalous, opprobrious, and defamatory words following, that is to say, "Stopped, supposed to be stolen, nine chased silver plates for tops of snuff-boxes unfinished (meaning the said chased silver plates for tops of snuff boxes so offered for sale as aforesaid); eight of them (meaning eight of the said nine silver plates) designed for furbelow boxes, and one of them (meaning one of the said silver plates) a round one, resembling a Dutch drinking piece, the lower part a man holding a jug in his hand looking to see if it is almost out, the scroll resembling a vine top and bottom; the other eight resembling scrolls and flowers, They (meaning the said nine silver plates) were offered by a jew (meaning the said plaintiff who so offered the said nine silver plates, to sell to the said defendant), and which said plaintiff then was of the Jewish religion, who (meaning the said plaintiff) owned them (meaning the said nine silver plates) to be stolen. The person whose property they (meaning the said nine silver plates) are may have them (meaning the said nine silver plates) again without fee or reward by applying to George Barnett, cutler and toyman, the corner of Cornhill, near the Mansion House" (meaning the said G. B. the now defendant); when in truth and in fact the said plaintiff before the composing, writing, printing, and publishing of the said libel had never owned the said nine chased silver plates or any of them to be stolen, nor were the same or any of them ever stolen: And the said defendant, further contriving and maliciously &c. as before [another libel as before]; by means of which said premises [as in the other conclusions]: And whereas the said plaintiff

plaintiff now is, &c. [as before]; yet the said defendant, knowing the premises, &c. on the twenty-second of February, in the year aforesaid, at L. aforesaid, falsely and maliciously, and without any reasonable or probable cause whatsoever, openly and publicly imposed the crime of felony on said plaintiff, and then and there falsely and maliciously, and without any reasonable or probable cause whatsoever, charged and accused the said plaintiff with having stolen nine other silver plates for tops of snuff boxes; and the said defendant further intending, &c. (another charge of felony generally); by means whereof, &c.: And whereas, &c. (for words).

Drawn by MR. WARREN.

Declaration for maliciously charging the plaintiff with bigamy before a justice of the peace, causing the justice to make out a warrant for apprehending the plaintiff, and also another warrant for his commitment, preferring at the quarter sessions a bill of indictment, which was found ignorant.

MIDDLESEX, to wit. W.W. complains of J. H. and S. W. in a plea of trespass on the case; for that whereas the said plaintiff now is a good, true, honest, just, and faithful subject of this realm, and as such hath always hitherto behaved and conducted himself without ever having been guilty, or suspected to have been guilty of polygamy, or of marrying a second wife during the life of the first, or of any such crime or offence, and until the committing of the grievance hereafter mentioned, was a person of good name, fame, credit, and reputation; yet the said defendants, well knowing the premises, but contriving and maliciously intending to injure the said plaintiff in his aforesaid good name, &c. heretofore, that is to say, on, &c. at, &c. in, &c. falsely and maliciously, and without any reasonable or probable cause whatsoever; made complaint against the said plaintiff to and before G. R. esquire, then and there being one of the justices of our lord the now king assigned to keep the peace of our said lord the king in and for the said county of Middlesex, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the said county, and then and there on that complaint falsely and maliciously, and without any reasonable or probable cause whatsoever, charged and accused him the said plaintiff with having before then feloniously married one M. B. his former wife being then alive, and then and there falsely and maliciously, and without any reasonable or probable cause whatsoever, caused and procured the said justice to make out and grant his warrant under his hand and seal for apprehending the said plaintiff, and carrying him before the said justice or some other of his majesty's justices for the said county, for and under colour and pretence of such supposed offence, and afterwards, on, &c. at, &c. falsely and maliciously, and without any reasonable or probable cause, caused and procured the said plaintiff to be apprehended and taken into custody under and by virtue of the said warrant, and to be carried and conveyed in custody to and before the said J. R. so being such justice as aforesaid; and there to be examined by and before the said justice touching and concerning the said supposed offence, and then and there falsely and maliciously, and without any reasonable or probable cause whatsoever, caused and procured the said justice to make

make out and grant his certain warrant of commitment, and to accordingly commit him the said plaintiff in the custody of the keeper of his majesty's goal of Newgate, there to remain under colour of such supposed offence as aforesaid until discharged by law; and afterwards, to wit, at the general quarter sessions of the peace of our lord the king, holden in and for the county of M. on, &c. in the twenty-eighth year of the reign of, &c. before W. M. &c. &c. &c. and others their fellow justices of our said lord the king, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, they the said defendants falsely and maliciously, and without any reasonable or probable cause whatsoever, preferred, and caused and procured to be preferred to the grand inquest of our said lord the king then and there at that session duly sworn and charged to enquire for our said lord the king, and the body of the said county of Middlesex, a certain bill of indictment against the said plaintiff for the said supposed offence so charged and objected against him as aforesaid, which said bill of indictment was not then and there, or at any other sessions found a true bill against the said plaintiff, but the jurors of the said grand inquest did then and there at that session return the said bill of indictment into the court of the said session not found: And the said plaintiff in fact says, that he was not nor is guilty of the premises so alledged and objected against him, and for which he was so indicted as aforesaid, and that the said prosecution so instituted against him as aforesaid was and is long since ended and determined; by means of which said several premises the said plaintiff is greatly injured in his aforesaid good name, &c. and is brought into public hatred, scandal, ignominy, and disgrace amongst all his neighbours and friends, and other good and worthy subjects of this realm, and was not only imprisoned in manner and for the time aforesaid, but also for a much longer space of time under his aforesaid commitment to Newgate, to wit, for the space of one month, and until he was discharged from thence by due course of law, and the said plaintiff was also, on occasion of the premises aforesaid, forced and obliged to lay out and expend a large sum of money, to wit, the sum of one hundred pounds of, &c. in and about obtaining his discharge of his imprisonment, and in maintaining himself whilst in prison, to wit, at, &c.: And the said plaintiff further says, that the said defendants further contriving and maliciously intending to injure him the said plaintiff in his aforesaid good name, &c. heretofore, to wit, on, &c. at, &c. falsely and maliciously, and without any reasonable or probable cause whatsoever, made complaint against the said plaintiff to and before the said G. R. esquire, then and there being such justice as aforesaid, and then and there on that complaint falsely and maliciously, and without any reasonable, &c. charged and accused him the said plaintiff with having before then feloniously married one M. B. his former wife being then alive, and then and there falsely and maliciously, and without any reasonable or probable cause

Compare this with the caption of the sessions.

The indictment ought to be set out verbatim here.

2d Count, for charging the plaintiff with bigamy, and making him appear there, and causing him to commit the plaintiff, who was not guilty of the charge.

whatsoever, caused the said plaintiff to go and be, and appear, and to be carried before the said G. R. so being such justice as aforesaid, and there to be examined by and before the said justice touching the said last-mentioned supposed offence, and then and there falsely and maliciously, and without any reasonable, &c. caused and procured the said justice to commit him the said plaintiff into the custody of the keeper of his majesty's gaol of Newgate, there to remain charged with and under colour of the said last-mentioned offence, whereas in truth and in fact he the said plaintiff was not nor is guilty of the said offence so charged and alledged against him as last aforesaid: And the said plaintiff further saith, that he hath not been as yet prosecuted with effect for such offence, and that the said last-mentioned complaint is long since ended and determined; by means of which said last-mentioned premises he the said plaintiff was and is further injured in his aforesaid good name, &c. and was imprisoned in manner aforesaid, and for a long space of time under his said last-mentioned commitment, to wit, for the space of one month, and he the said plaintiff also was, on occasion of the premises in this Count mentioned, forced and obliged to lay out and expend a large sum of money, to wit, the sum of one hundred pounds, in and about obtaining his discharge from his said last-mentioned imprisonment, to wit, at, &c.

N. B. The plaintiff in this case was not able to get a copy of the indictment.

V. LAWES.

Declaration for a malicious prosecution of an extent in aid against defendant and another; per quod, A. arrests him, B. detains him in custody. C. seizes his goods.

MIDDLESEX, to wit. J.B.P. complains of J.R.; for that the said defendant wickedly, fraudulently, injuriously, and maliciously contriving to hurt and injure the said plaintiff, and to cause him to be unjustly arrested and imprisoned by our sovereign lord the king, and to cause the lands and tenements, goods and chattels, debts, credits, specialties, and sums of money of the said plaintiff, to be wrongfully extended and seized, and thereby wrongfully and injuriously to deprive the said plaintiff of his personal liberty, and of the use, enjoyment, benefit, and advantage of his lands and tenements, &c. and to bring him the said plaintiff into great disgrace among his neighbours and other the king's faithful subjects, and to put him to great expences, and to harass, vex, and oppress the said plaintiff, and to bring him to ruin, on the second of March A. D. 1778, at, &c. he the said defendant, to carry into effect his said malicious purposes and intentions, did wrongfully, fraudulently, deceitfully, falsely, and maliciously suggest and represent, and cause to be suggested and represented to sir J. S. knight, chief baron of his majesty's court of exchequer at Westminster, that he the said defendant was a debtor of our said lord the king, and that he the said plaintiff was severally, justly, and truly indebted to him the said defendant in the sum of six hundred and thirty pounds of, &c. for money advanced by the said defendant to the said plaintiff and J. R. to secure the payment

ment of which money, he the said plaintiff, by a promissory note signed by him the said plaintiff, bearing date the fifth day of, &c. promised to pay the said J. R. or order the sum of six hundred and thirty pounds value received, which said note was indorsed by the said J. R. to one R. T. and by the said R. T. to the said defendant, and that the said plaintiff and J. R. as the said defendant was informed and verily believed, were failed in their credit and circumstances, and did abscond to avoid being arrested, and that the said sum of six hundred and thirty pounds was a debt originally and bona fide due and owing to the said defendant in manner aforesaid, and was not in trust for any person or persons, and that the said sum of six hundred and thirty pounds so due to the said defendant was in danger of being lost, unless a more speedy course than the usual way of proceedings should be forthwith taken to recover the same; and the said defendant, by means of such false, fraudulent, unjust, and deceitful suggestion and representation, and in order to carry into effect his said malicious purposes and intentions, afterwards, to wit, on, &c. in the eighteenth year of the reign of, &c. at, &c. did wrongfully, falsely, fraudulently, maliciously, and injuriously cause and procure to be issued by and out of his majesty's court of exchequer at Westminster, a certain writ of our said lord the king directed to the sheriff of Middlesex, whereby our said lord the king, after reciting that, &c. &c. commanded the said sheriff that, &c. &c. [here recite the writ of extent against plaintiff throughout]; by virtue of which said writ the said defendant afterwards falsely and maliciously for the intents and purposes aforesaid, caused an inquisition to be taken at the house known by the sign of the Three Tuns, in Brook Street, near Holborn, in the county of M. the second day of _____, in the eighteenth year aforesaid, before _____ sheriff of the county of Middlesex aforesaid, on the oath of twelve good and lawful men of the said sheriff's bailiwick, whereby it was found that the said plaintiff made a note in writing, bearing date, &c. with his own proper hand thereunto subscribed, and thereby nine months after date of the said note promised to pay to J. R. or his order the sum of six hundred and thirty pounds value received, which said note was indorsed by the said J. R. to one R. T. and by the said R. T. to the said defendant; whereby and by force of the statute in such case made and provided, they became severally liable to pay to the said defendant the said sum of money in the said note mentioned, according to the tenor and effect of the said note and the said indorsement so made thereon as aforesaid; which said debt of six hundred and thirty pounds so due as aforesaid the said sheriff, on the day of taking the said inquisition, seized and took into his majesty's hands according to the command of the said writ, as by the said writ and return thereof, and the inquisition thereto annexed remaining in his majesty's said court of exchequer at Westminster appears; and the said defendant, by means of his said false, fraudulent, unjust, and deceitful suggestion and representation so made to the said chief baron as aforesaid, and for the malicious intents and purposes aforesaid, afterwards, to wit,

(1) " In 2d on the said second of in the said (1) eighteenth year of, &c.
 Count." did wrongfully, falsely, fraudulently, maliciously, and injuriously.
 (2) " and with- (2) cause and procure to be issued by and out of his majesty's said
 out any reason- court of exchequer at Westminster, a certain other writ of our
 able or proba- said lord the king directed to the sheriff of the county of Middle-
 ble cause what- sex; by which said writ his said majesty, after reciting *the said* (3)
 soever," inquisition, &c. commanded, &c. [here recite the whole of the
 (3) " that by extent in aid]: And the said defendant, in further prosecution of
 an" his said malicious intents and purposes against the said plaintiff,
 afterwards and before the return of the said last-mentioned writ,
 to wit, on, &c. at, &c. wrongfully, &c. delivered, and caused to be
 delivered the said last-mentioned writ to the said , then and
 still being sheriff of the said county of Middlesex, to be executed
 in due form of law, and then and there required the said she-
 riff to execute the same, by virtue whereof the said sheriff after-
 wards and before the return of the said last-mentioned writ, to
 wit, on, &c. at, &c. within the bailiwick of the said sheriff, took
 and arrested the body of the said plaintiff, and seized and took
 into the said sheriff's custody divers household furniture, goods,
 and chattels of the said plaintiff, and kept and detained as well the
 body as the said household goods, &c. of the said plaintiff in the cus-
 tody of the said sheriff, by virtue of the said last-mentioned writ
 of extent until the same writ of extent was superseded in respect of
 the said plaintiff as hereafter mentioned; and the said plaintiff
 avers, that the said last-mentioned writ of extent, on, &c. was
 superseded in respect of the said plaintiff by virtue of his said ma-
 jesty's writ of superseatas issued out of his said majesty's court of
 exchequer at Westminster for that purpose, and the said last-men-
 tioned writ of extent, in respect of the said plaintiff, was and is
 ended, to wit, at, &c. *whereas in truth and in fact the said plain-
 tiff was not severally, justly, and truly indebted to him the said de-
 fendant in the sum of six hundred and thirty pounds for money ad-
 vanced by the said defendant to the said plaintiff and J. R.; and
 whereas in truth and in fact the said plaintiff did not, to secure the
 repayment of any sum of money advanced by the said defendant to the
 said plaintiff, and the said J. R. make the said promissory note to the
 said J. R.; and whereas in truth and in fact the said plaintiff
 was not failed in his credit and circumstances, and did abscond to
 avoid being arrested; and whereas in truth and in fact the said sum
 of six hundred and thirty pounds was not a debt originally and
 bona fide due and owing to the said defendant, nor was the said sum
 of six hundred and thirty pounds, if the same had been due to the
 said defendant, in danger of being lost, unless a more speedy course
 than the usual way of proceeding should be forthwith taken to recover
 the same as the said defendant suggested and represented in form
 aforesaid; and whereas in truth and in fact the said defendant was
 not entitled to the prerogative process of his majesty's court of exche-
 quer by writ or writs of extent against the said plaintiff, to arrest the
 body, and seize and enter the lands, tenements, goods, and chattels
 of the said plaintiff in satisfaction of the said sum of six hundred and
 thirty*

thirty pounds, or any part thereof; by means of which said malicious suing out and prosecuting of the said last-mentioned writ of extent against the said plaintiff, and the proceedings had thereon before the same could be superseded as aforesaid, the said plaintiff suffered a long and grievous imprisonment, and lost the use, enjoyment, benefit, and advantage of his lands and tenements, goods, and chattels, and of the debts, credits, sum and sums of money due and owing to the said plaintiff, and was disabled and prevented from getting and recovering divers debts, credits, sum and sums of money due and owing to the said plaintiff, to enable him the said plaintiff to discharge the debts due and owing from the said plaintiff to his creditors, and to supply his other necessary uses and occasions, and the said plaintiff hath lost his credit and reputation among his friends and neighbours, and other the king's subjects, and particularly with A. B. C. and D. &c. &c. to whom respectively the said plaintiff was then indebted in divers large sums of money, insomuch that they, by reason of the said malicious prosecution against the said plaintiff, and for no other cause whatsoever, respectively refused to give any longer credit to the said plaintiff for the payment of their respective debts which they otherwise would have done; and the said A. B. C. and D. for the recovery of the debts due to them from the said plaintiff, afterwards, to wit, on, &c. at, &c. caused the said plaintiff to be taken by the said sheriff, and to be detained under his custody by virtue of a bill of Middlesex returnable before the lord the king at Westminster, on, &c. to answer to the said A. B. C. and D. in a plea, &c. and also the said E. F. &c. for the recovery of the debt due to them from the said plaintiff, hath caused the said plaintiff to be detained in the custody of the said sheriff by virtue of a writ of special *capias* returnable before the lord the king, on, &c. to answer the said E. F. &c. in a plea of trespass on the case, to the damage of the said E. F. &c. of ten pounds [there were other writs of detainer against the plaintiff at the suit of other creditors, set out the same]; and the said L. M. for the recovery of the debt due and owing to him from the said plaintiff, caused divers goods and chattels of the said plaintiff to be taken in execution by the said sheriff, by virtue of a writ of *fiery facias* issued out of the court of our lord the king before the king himself, at the suit of the said L. M. against the said plaintiff for one thousand nine hundred pounds debt and sixty-three shillings damages, returnable before the lord the king at Westminster on, &c.; and the said plaintiff, by means of the premises, hath been compelled to pay to divers others of his creditors divers other sums of money due to them respectively from the said plaintiff, sooner than they would otherwise severally have required the same; and the said plaintiff, by reason of the premises, is not only greatly hurt in his good name, credit, and reputation as aforesaid, but by reason of his being so arrested, detained, and proceeded against by his creditors as aforesaid, hath sustained and suffered a grievous imprisonment, and hath been put to great trouble, costs, and charges, and is thereby brought

the count. states brought to ruin: And also, that he the said defendant wickedly, &c. contriving, &c. [finish this Count same as the first, only inserting what is in Italic, and inserting what is in the margin].
the plaintiff. *Plaintiff's general issue.* G. Wood.

N. B. There were two writs of execution sued out of the exchequer by the defendant, one against A. B. the payee of a note, and the other against defendant, the supposed drawer of the note.

The plaintiff laid his damages at ten thousand pounds, but recovered a verdict with only thirty pounds.

Trinity Term, 28. Geo. III.

Declaration for maliciously arrested and holding plaintiff to bail for eleven pounds and upwards, where nothing was due from him to defendant, who discontinued the suit.

MIDDLESEX, to wit. John Tye complains of Benjamin Harris being, &c.; for that whereas by the laws of this realm no person ought to be arrested or attached by his or her body, at the suit of any other person in any action or suit by process out of any of the superior courts of this realm, unless such person, at whose suit such process be sued out, have a cause of action against such person so arrested, to the amount of ten pounds or upwards; nevertheless the said Benjamin, well knowing the premises, but contriving and maliciously intending unjustly to molest, oppress, injure, and disquiet the said John, and to cause him to be arrested and imprisoned, and to lay out and expend a large sum of money, and to compel and oblige the said John to procure his friends to become surety or bail for him the said John, he the said Benjamin not having any cause of action against the said John to the amount of ten pounds, or of any other sum of money whatsoever heretofore, that is to say, in the vacation of the term of St. Hilary, in the twenty-seventh year of the reign of, &c. maliciously and injuriously prosecuted out of the court of our said lord the king, before the king himself (the said court then and still being at Westminster, in the said county of Middlesex) a certain precept of our said lord the king called a bill of Middlesex; by which said precept the said lord the king commanded the sheriff to take the said John if he should be found in his bailiwick, and him safely keep, so that he might have his body before the said lord the king at Westminster on, &c. to answer to the said Benjamin in a plea of trespass, and also to a bill of the said Benjamin against the said John for forty pounds upon promises, according to the custom of the said court of our said lord the king, before the king himself to be exhibited, and that he should have there then that precept; which said precept he the said Benjamin maliciously and injuriously intending as aforesaid, then and there, without any reasonable or probable cause, marked and indorsed, and caused and procured to be marked and indorsed for bail for ten pounds and upwards, by virtue of an affidavit made by the said Benjamin, and duly assised according to the form of the statute in such case made and provided; by reason whereof, the said Benjamin afterwards, and before the return of the said writ, to wit, on, &c. at, &c. caused and procured the said John to be arrested and imprisoned, and him the said John so arrested

rested and imprisoned at the suit of the said Benjamin, by the means and for the cause aforesaid, caused to be kept and detained in prison for a long space of time, to wit, for the space of one day then next following, and until the said John for his enlargement and discharge from the said imprisonment, afterwards, to wit, on, &c. at, &c. was obliged to find good and sufficient bail for his appearance before our said lord the king at Westminster at the return of the said precept, to answer to the said Benjamin in the plea aforesaid, according to the exigency thereof, whereas in truth and in fact the said John, at the time of the prosecuting the said precept, or at any time before or afterwards, was not indebted to the said Benjamin in the sum of ten pounds, or in any other sum of money whatsoever, for which the said John, by the laws of this realm, ought to have been arrested by his body, or ought to have been obliged to find bail for his appearance at the return of the said precept, to answer to the said Benjamin, or in default thereof to be detained in prison; nor had the said Benjamin, at the time of the suing out the said precept, or at the time of the arrest aforesaid, or at any time afterwards, any just or probable cause or pretence for arresting and imprisoning the said John as aforesaid, to wit, at, &c.: And the said John further says, that the said Benjamin afterwards, to wit, in Easter term, in the twenty-seventh year aforesaid, in the said court of our lord the king, before the king himself at Westminster aforesaid, exhibited his bill against the said John upon the appearance of the said John, according to the exigency of the aforesaid precept, in a certain plea of trespass upon the case upon promises, and such proceedings were thereupon had in the same court of our said lord the king, before the king himself at Westminster aforesaid, that afterwards, to wit, in the term of St. Hilary then next following, he the said Benjamin did not prosecute his bill aforesaid against the said John with effect, but permitted his suit aforesaid to be discontinued for want of prosecution, which said action or suit is now wholly ended and determined, to wit, at, &c.; by reason and means of all which said premises, the said John hath not only been put to great charges and expences, and been forced and obliged to lay out and expend, and hath actually laid out and expended a large sum of money, to wit, the sum of thirty pounds of lawful, &c. in and about the discharging himself from his said imprisonment, and in and about his defence in the premises, but hath been also compelled and obliged to suffer and undergo many grievous pains both of body and mind during his said imprisonment, and was, during all that time of his said imprisonment, prevented and hindered from doing and transacting his lawful affairs and business, and hath been in other respects, by reason and means of the premises aforesaid, greatly injured, troubled, and damaged, to wit, at, &c. to the damage of the said John of four hundred pounds, and therefore he brings suit, &c.

V. LAWES.

MIDDLESEX,

Declaration for maliciously suing out an execution upon a judgment entered up by a warrant of attorney given for that purpose to secure the payment of a sum of money by instalments, after the first instalment was paid, and before the second became due, with a special per quod.

MIDDLESEX, to wit. Edward Baker complains of Samuel Mercer being, &c.; for that whereas before the committing of the grievance hereafter next mentioned, to wit, on the twenty-fourth of November A. D. 1788, at Westminster, in the county of Middlesex, the said E. had made and sealed, and as his act and deed delivered to the said Samuel a certain writing-obligatory, and had thereby acknowledged himself to be held and firmly bound to the said Samuel in the sum of four hundred pounds of good and lawful, &c. to be paid to the said Samuel or his certain attorney, his executors, administrators, or assigns, for which payment, well and truly to be made, the said E. then and there bound himself, his heirs, executors, and administrators firmly by the said writing-obligatory, subject nevertheless to a certain condition thereunder written, for the making void the said writing-obligatory on payment of the sum of two hundred pounds of good and lawful, &c. with lawful interest for the same, by the said E. his heirs, executors, or administrators, unto the said Samuel, his executors, administrators, or assigns, on the several and respective days and times, and in manner following, that is to say, the sum of sixteen pounds thirteen shillings and fourpence of like good and lawful money, part thereof, with like lawful interest for the said sum of two hundred pounds on the twenty-fourth of February, which would be A. D. 1789, the further sum of sixteen pounds thirteen shillings and fourpence of like good and lawful money, other part of the said sum of two hundred pounds, with lawful interest for the sum of one hundred and eighty-three pounds six shillings and eightpence on the twenty-fourth of May, in the said year of Our Lord 1789, the further sum of sixteen pounds thirteen shillings and fourpence of like, &c. other part of the said sum of two hundred pounds, with lawful interest for the sum of one hundred and sixty-six pounds thirteen shillings and fourpence, on the twenty-fourth of August, in the said A. D. 1789; the further sum of sixteen pounds thirteen shillings and fourpence of like, &c. other part of the sum of two hundred pounds, with lawful interest for the sum of one hundred and fifty pounds, on the twenty-fourth of November, in the said A. D. 1789; the further sum of sixteen pounds thirteen shillings and fourpence of like good and lawful money, other part of the said sum of two hundred pounds, with lawful interest for the sum of one hundred and thirty-three pounds six shillings and eightpence, on the twenty-fourth of February, which would be A. D. 1790, the further sum of sixteen pounds thirteen shillings and fourpence of like, &c. other part of the said sum of two hundred pounds, with lawful interest for the sum of one hundred and sixteen pounds thirteen shillings and fourpence, on the twenty-fourth of May, in the said year of Our Lord 1790; the further sum of sixteen pounds thirteen shillings and fourpence of like, &c. other part of the said sum of two hundred pounds, with lawful interest for the sum of one hundred pounds, on the twenty-fourth of August, in the said A. D. 1790, the further sum of sixteen pounds thirteen shillings and fourpence of like, &c. other part

of the said sum of two hundred pounds, with lawful interest for the sum of eighty-three pounds six shillings and eightpence, on the twenty-fourth of November, in the said A. D. 1790; the further sum of sixteen pounds thirteen shillings and fourpence of like, &c. other part of the said sum of two hundred pounds, with lawful interest for the sum of sixty-six pounds thirteen shillings and fourpence, on the twenty-fourth of February which would be A. D. 1791, the further sum of sixteen pounds thirteen shillings and fourpence of like, &c. other part of the said sum of two hundred pounds, with lawful interest for the sum of fifty pounds, on the twenty-fourth of May, in the said year of Our Lord 1791; the further sum of sixteen pounds thirteen shillings and fourpence of like, &c. other part of the said sum of two hundred pounds, with lawful interest for the sum of thirty-three pounds six shillings and eightpence, on the twenty-fourth of August, in the said A. D. 1791; and the further sum of sixteen pounds thirteen shillings and fourpence of like, &c. residue of the said sum of two hundred pounds, with lawful interest for the said last-mentioned sum of sixteen pounds thirteen shillings and fourpence, on the twenty-fourth of November, in the said A. D. 1791; and as a further security for the payment of the said sum of two hundred pounds, and interest on the several and respective days, and in manner aforesaid, the said E. before the committing of the grievance hereafter mentioned, to wit, *on the said twenty-fourth of November A. D. 1788* aforesaid, at Westminster, in the county of Middlesex aforesaid, made and executed a certain warrant of attorney directed to William Hale, William Wilbraham, and James Duncan, attornies of his majesty's court of King's Bench at Westminster jointly and severally, or to any other attorney of the same court, thereby desiring and authorizing them the said attornies, or any one of them, or any other attorney of the court of King's Bench aforesaid, to appear for him the said E. as of the then present Michaelmas term, or any subsequent term, and then and there to receive a declaration for him in an action of debt for four hundred pounds, being money borrowed at the suit of the said Samuel, and thereupon to confess the same action, or else to suffer a judgment by *non sum informatus* or otherwise to pass against him in the same action, and to be thereupon forthwith entered up against him upon record of the said court for the sum of four hundred pounds, and all costs of suit and otherwise howsoever; and by a certain memorandum thereunder written, it was declared, that the said warrant of attorney was intended to refer to a bond bearing equal date therewith, meaning the said bond or writing obligatory hereinbefore mentioned, and it was mutually agreed between the parties therein mentioned, that no execution should issue thereon, unless failure should be made in the performance of the said bond and the condition thereof: And whereas after the making of the said writing-obligatory in the said condition thereunder written, and of the said writing of attorney, with the said memorandum thereunder written as aforesaid, and before the committing of the grievance

Warrant of attorney.

ance hereafter next mentioned, in pursuance of the said writing of attorney a judgment was entered up of record as of Michaelmas term, in the twenty ninth year of the reign of our said lord the now king, in the court of our said lord the now king, before the king himself at Westminster, at the suit of the said Samuel against the said E. whereby it was considered by the same court that the said Samuel should recover against the said Edward his debt, and also sixty-three pounds for his damages which he had sustained, and as well by occasion of the detaining the said debt as for his costs and charges by him about his suit in that behalf expended : And whereas before the committing of the grievance hereinafter next mentioned, to wit, on the *twenty-fourth of February A. D. 1789*, at Westminster, in the county of Middlesex aforesaid, a certain sum of money, to wit, the sum of sixteen pounds thirteen shillings and fourpence of lawful money, &c. with lawful interest for the said sum of two hundred pounds, amounting to a certain sum of money, to wit, the sum of two pounds ten shillings of like lawful, &c. and making together with the said sum of sixteen pounds thirteen shillings and fourpence, the sum of nineteen pounds three shillings and fourpence of like, &c. became and was due and payable from the said E. to the said Samuel upon the said writing-obligatory, by the condition thereof, and which said sum of nineteen pounds three shillings and fourpence, before the committing of the grievance hereafter next mentioned, had been and was paid and satisfied by the said Edward to the said Samuel, to wit, at Westminster, in the county of Middlesex aforesaid; yet the said Samuel, well knowing all and singular the premises, but contriving and wickedly and maliciously intending to injure, prejudice, and aggrieve the said E. and to cause his goods and chattels to be wrongfully and injuriously seized and taken in execution for a large sum of money, under colour and pretence of the said judgment, and thereby not only to deprive the said Edward of the use and benefit thereof, but to bring him into great disgrace, discredit, and disrepute amongst his neighbours and other the king's faithful subjects, and to injure and damnify the said E. in his trade and business of a butcher, and to put him to great charges and expences of his monies, and to harass, oppress, impoverish, and wholly ruin him the said E. heretofore, and after the payment of the said sum of nineteen pounds three shillings and fourpence by the said E. to the said Samuel as aforesaid, and before any further sum of money became due or payable from the said E. to the said Samuel upon the said writing-obligatory by the condition thereof, to wit, *on the eighteenth of April, in the twenty-ninth year of the reign of our lord the now king* at Westminster aforesaid, in the county aforesaid, the said Samuel wrongfully, unjustly, and maliciously, and without any reasonable or probable cause whatsoever, sued and prosecuted, and caused and procured to be sued and prosecuted out of the said court of our said lord the king, before the king himself here, to wit, at Westminster, in the county of Middlesex aforesaid, a certain writ of our said lord the king called a

fieri facias, upon and under colour and pretence of the said judgment, directed to the sheriff of Middlesex; by which said writ our said lord the king commanded the said sheriff that he should cause to be levied of the goods and chattels in the bailiwick of the said sheriff of the said E. his debt and damages aforesaid in form aforesaid recovered, and that the said sheriff should have that money before our said lord the king at Westminster, on Wednesday next after fifteen days from the day of Easter, to render to the said Samuel for the debt and damages aforesaid, and that the said sheriff should have there that writ; which said writ he the said Samuel afterwards and before the said return thereof, to wit, on the eighteenth of April, in the year last aforesaid, at Westminster aforesaid, in the county aforesaid, wrongfully, unjustly, and maliciously, and without any reasonable or probable cause whatsoever, caused and procured to be indorsed for the said sheriff to levy two hundred and fifteen pounds fourteen shillings and sixpence, besides sheriff's poundage, officer's fees, and all other expences, and which said writ so indorsed as aforesaid, he the said Samuel afterwards, and before the said return thereof, to wit, on the same day and year last aforesaid, at Westminster, in the county aforesaid, wrongfully, unjustly, and maliciously, and without any reasonable or probable cause whatsoever, caused and procured to be delivered to William Curtis, esquire, and sir B. Hammet, knight, who then and from thenceforth hitherto, until, and at and after the return of the said last-mentioned writ, were sheriffs of Middlesex aforesaid; to be executed in due form of law, required the said sheriff to execute the same; by virtue of which said writ the said W. C. and sir B. H. so being sheriffs of Middlesex as aforesaid, afterwards and before the said return thereof, to wit, on the same day and year last aforesaid, and whereupon the bailiwick of the said sheriff, as such sheriff, at the instance and request of the said Samuel, entered a certain messuage or dwelling-house of the said Edward, situate and being in the parish of St. James's, in the liberty of Westminster, in the county of Middlesex aforesaid, and then and there made a great noise and disturbance therein, and staid and continued in the said messuage or dwelling-house, making such noise and disturbance therein for a long space of time, to wit, for the space of ten days then next following, and thereby for and during all that time greatly disturbed and disquieted the said E. and his family in the peaceable and quiet possession, use, occupation, and enjoyment of the said messuage or dwelling-house, and then and there, at the like instance and request of the said Samuel, seized and took in execution the goods and chattels (as by the inventory, enumerating all the articles seized) of the said E. of a large value, to wit, of the value of three hundred pounds, then found and being in the said messuage or dwelling-house, and kept and detained the said goods and chattels for a long space of time, to wit, for the space of ten days, whereby the said E. for and during all that time, there lost and was deprived of the use and benefit of his said goods and chattels, and by means of the several premises aforesaid he the said

Special damage.

ad Count, on
the judgment
entered up for
the instalment
only.

said E. was not only put to great trouble and anxiety of mind, and was forced and obliged to and did necessarily lay out and expend a large sum of money, to wit, the sum of fifty pounds of lawful, &c. in and about the staying of all further proceedings on the said writ of *fiery facias*, and regaining the possession of his said messuage or dwelling-house, and of his said goods and chattels so seized and taken in execution under and by virtue of the said writ as aforesaid, but also that he the said E. was and is greatly injured in his said trade and business aforesaid, insomuch that by means thereof, and on no other account whatsoever, divers and very many persons, and particularly William Trinder, Henry Lloyd, Charles Page, George Padget, and Edward Gurney, with whom the said Edward was before then used and accustomed to deal on credit, and who would otherwise have given credit to the said E. in his aforesaid trade and business, wholly refused and neglected, and declined to give him any further credit there; and the said E. by means of the premises, hath been compelled to pay to divers of his creditors, and particularly to Henry Lloyd, Richard Geering, John H. William H. and R. B. divers large sums of money due to them respectively from the said E. much sooner than they would otherwise severally require the same, and hath and is otherwise greatly injured and damnified, very much impoverished, and almost wholly ruined, to wit, at Westminster, in the county of Middlesex: And whereas the said S. before the committing of the grievances hereafter next mentioned, to wit, in Michaelmas term, in the twenty-ninth year of the reign of our lord the now king, in the court of our said lord the now king before the king himself here, (the said court then and still being holden at Westminster aforesaid, in the county of Middlesex aforesaid) by the consideration and judgment of the same court recovered against the said E. as well a certain debt of four hundred pounds as also sixty-three pounds for his damages which he had sustained as well by occasion of the detaining the said debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said E. was convicted, as by the record and proceedings thereof still remaining in the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, in the county aforesaid, more fully appears: And whereas the said judgment had been entered up by the mutual consent of the said S. and E. for securing the payment by the said E. to the said S. of a certain lesser sum of money, with interest by certain instalments at certain times, to wit, at Westminster aforesaid, in the county aforesaid: And whereas at the time of committing the grievance hereafter next mentioned, the first instalment of the said lesser sum had been paid and satisfied, and no other instalment thereof had become due, and the said E. was not indebted to the said S. upon or by virtue of the said last-mentioned judgment, in any sum of money for which the said Samuel, by the laws of this realm, or the practice of the said court of our said lord the king, before the king himself, could or ought to have sued out or obtained

obtained execution against the said E. or his goods and chattels in any way howsoever; yet the said S. well knowing all and singular the premises last aforesaid, but contriving and wickedly and maliciously intending to injure, prejudice, and aggrieve the said E. and to cause his goods and chattels to be wrongfully and injuriously seized and taken in execution for a large sum of money, under colour and pretence of the said last-mentioned judgment, and thereby not only to deprive the said E. of the use and benefit thereof, but to bring him into great disgrace, discredit, and disrepute among his neighbours and other the king's faithful subjects, to injure and damnify the said E. in his aforesaid trade and business of a butcher, to put him to great charges and expences of his monies, to vex, harass, oppress, impoverish, and wholly ruin him the said Edward heretofore, to wit, on the *eighteenth of April*, in the twenty-ninth year of the reign of our said lord the now king, at Westminster aforesaid, in the county aforesaid, wrongfully, unjustly, and maliciously, and without any reasonable or probable cause whatsoever, sued and prosecuted, and caused and procured to be sued and prosecuted out of the said court of our said lord the king, before the king himself here, to wit, at Westminster, in the county of Middlesex aforesaid, a certain writ of our said lord the king, commonly called a *fieri facias*, under colour and pretence of the said last-mentioned judgment, directed to the sheriff of Middlesex, by which said last-mentioned writ our said lord the king commanded the said sheriff that he should cause to be levied of the goods and chattels in the bailiwick of the said sheriff of the said E. his debt and damages last aforesaid, in form aforesaid recovered, and that the said sheriff should have that money before our said lord the king at Westminster on Wednesday next after fifteen days from the day of Easter, to render to the said Samuel for the debt and damages aforesaid, and that the said sheriff should have there that writ; which said last-mentioned writ he the said S. afterwards, and before the return thereof, to wit, on the eighteenth of April, in the year last aforesaid, at Westminster aforesaid, in the county aforesaid, wrongfully, unjustly, and maliciously, and without any reasonable or probable cause whatsoever, caused and procured to be delivered to the said W. C. esquire, and sir B. H. knight, who then and from thenceforth until and at and after the return of the said last-mentioned writ, was sheriff of Middlesex aforesaid, to be executed in due form of law; by virtue of which said last-mentioned writ the said W. C. and sir B. H. so being sheriff of Middlesex as aforesaid, afterwards and before the return thereof, to wit, on the same day and year last aforesaid, and within the bailiwick of the said sheriff, as such sheriff, at the instance and request of the said S. entered the said messuage or dwelling-house of the said E. situate as aforesaid, and then and there made a great noise and disturbance therein, and staid and continued in the said messuage or dwelling-house, making such noise and disturbance therein for a long space of time, to wit, for the space of ten days then next following, and thereby,

thereby, for and during all that time there greatly disturbed and disquieted the said Edward and his family in the peaceable and quiet possession, use, occupation, and enjoyment of his said messuage or dwelling-house, and then and there, at the like instance and request of the said Samuel, seized and took in execution the goods and chattels [as before by inventory] of the said Edward of a large value, to wit, of the value of three hundred pounds, and there found and being in the said messuage or dwelling-house, and kept and detained the said last-mentioned goods and chattels for a long space of time, to wit, for the space of ten days, whereby the said E. for and during all that time there lost and was deprived of the use and benefit of his said last-mentioned goods and chattels, by means of the several premises last aforesaid, he the said E. was not only put to great trouble and anxiety of mind, and was forced and obliged and did necessarily lay out and expend a large sum of money, to wit, the sum of fifty pounds of lawful, &c. in and after the staying of all further proceedings on the said last-mentioned writ of *fieri facias*, and regaining the possession of his said messuage or dwelling-house, and of the said last-mentioned goods and chattels so seized and taken in execution under and by virtue of the said last-mentioned writ as aforesaid, but also thereby he the said E. was and is greatly injured in his trade and business aforesaid, inasmuch that by means whereof, and on no other account whatsoever, divers and very many persons, and particularly William T. H. L. Charles P. G. P. and E. G. with whom the said Edward was before then used and accustomed to deal on credit, and who would otherwise have given credit to the said Edward in his aforesaid trade and business, wholly refused, neglected, and declined to give him any further credit therein; and the said Edward, by means of the premises last aforesaid, hath been compelled to pay to divers of his creditors, and particularly to H. L. R. G. J. H. W. E. and R. B. divers large sums of money due to them respectively from the said E. much sooner than they would otherwise severally have required the same, and hath been and is otherwise greatly injured and damnified in his aforesaid trade and business, very much impoverished, and almost wholly ruined, to wit, at Westminster, in the county of Middlesex aforesaid; to the damage of the said E. of one thousand pounds; and therefore, &c. Pledges, &c.

G. Woon.

Case for maliciously holding to bail and false imprisonment, by procuring a detainer against plaintiff when in custody at the suit of defendant, whereby those who would have bailed him refused.

LONDON, to wit. Richard Selby complains of William Marchant, Charles Rymer, and Leaver Legge, being in the custody, &c.; for that whereas before the grievance hereinafter next mentioned, the said Richard being a merchant and trading as such to and from the island of Madeira, had purchased divers goods and merchandizes of one Henry Jordan to a large amount, to wit, to the amount of seventy-eight pounds of lawful money of Great Britain, on the terms of paying for the same in Madeira wines, to be remitted by the said Richard to London on the account and risk

risk of the said Henry Jordan; and the said Richard, before the committing of the said grievance, had accordingly remitted to the said H. Jordan certain Madeira wines to a large amount, to wit, to the amount of seventy pounds, in part discharge of his said demand; and the said W. C. and L. well knowing the premises, and claiming to be entitled to the wines so remitted to the said H. Jordan as assignees of his estate and effects by force of the statute now in force concerning bankrupts, had, before the committing of the said grievance, possessed themselves of the said wines, to wit, at London aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap; yet the said defendants, maliciously devising and intending to oppress and injure the said Richard, and without any reasonable or probable cause whatsoever to cause and procure him to be imprisoned and detained in prison, and to prevent the friends and acquaintance of the said Richard from becoming bail for him, and to put him to great trouble, inconvenience, and expence, and to ruin his credit and reputation as a merchant, and heretofore, to wit, on the third of November, A. D. 1738, wrongfully, maliciously, and without any reasonable or probable cause whatsoever, caused to be sued and prosecuted out of the court of the said lord the king, before the king himself at Westminster, in the county of Middlesex, a certain writ of the said lord the king called a *special capias ad respondendum*, against the said Richard (by the name and addition of Richard S. late of Westminster, in the county of Middlesex, merchant), directed to the sheriff of Middlesex, whereby the said lord the king commanded the said sheriff, that he should take the said Richard, if he should be found in his bailiwick, and safely keep him, so that he might have his body before the said lord the king on a certain day in the said writ mentioned, wheresoever the said lord the king should then be in England, to answer to the said W. C. and L. as such assignees as aforesaid, in a plea of trespass upon the case upon certain supposed promises and undertakings in the said writ specified, to the damage of the said W. C. and L. as such assignees, of one hundred and thirty pounds as it was said, and that he should have there that writ; which said W. C. and L. afterwards, and before the return thereof, to wit, on the day and year first above-mentioned, at L. &c. aforesaid, wrongfully, maliciously, and without any reasonable or probable cause whatsoever, and with the intent aforesaid, caused to be indorsed for bail for ninety-two pounds and upwards, by virtue of an affidavit of the supposed cause of such action or suit before them made and affiled in the said court, and to be delivered so indorsed to the then sheriff of Middlesex to be executed; and the said W. C. and L. afterwards, to wit, on the day and year last aforesaid, wrongfully and maliciously, and without any reasonable or probable cause whatsoever, and by virtue of the said writ, caused the said Richard, then being in the custody of the said sheriff, to wit, at Westminster aforesaid, under a certain otherailable process against him at the suit of Thomas Smith, John Wright, and Henry Gray, directed to the same sheriff, to be detained in his custody

tody at the suit of them the said William, Charles, and Leaver, by means and in consequence of which said detainer one William Ludlam, and one Bourke, of London, merchants, who then were willing to have become, and would have then and there become bail to the said sheriff for the appearance of the said Richard at the return of the before-mentioned process at the suit of Thomas Smith, John Wright, and Henry Gray, in case no writ had been issued against him at the suit of the said William, Charles, and L. wholly refused to become such bail, by reason of which said several premises the said Richard was obliged to remain and continue in the custody of the said sheriff for want of bail to the said several actions for a long space of time until he afterwards, to wit, on the twelfth of November, in the year aforesaid, by virtue of his majesty's writ of *habeas corpus cum causa*, before then sued and prosecuted out of the said court, directed to the said sheriff, was in obedience to the said last-mentioned writ, brought before the right honourable Lloyd lord Kenyon, then and still being chief justice of the said court, at his chambers in Serjeant's Inn, Chancery-lane, London, and was thereupon committed by the said chief justice to the custody of the marshal of the Marshalsea of the said Lord the king, before the king himself, charged with the before-mentioned actions respectively, and the said Richard was afterwards kept and detained in the custody of the said marshal by virtue of the said commitment for a further and longer space of time, and until he afterwards, to wit, on the twenty-eighth of November, in the year aforesaid, in order to discharge himself from the said last-mentioned custody, found good and sufficient bail to the said respective actions, according to the course and practice of the said court, as by the said writ of *habeas corpus*, and commitment thereupon, and the recognizance of the said bail now remaining in the same court, at Westminster aforesaid, more fully appears; whereas in truth and in fact, the said Richard was not at the time of the suing out of the said writ at the suit of the said William, Charles, and L. against the said Richard, or at the time of his detention and imprisonment by virtue thereof, indebted to the said William, Charles, and L. as such assignees as aforesaid, or otherwise, in the sum of ninety-two pounds, nor had they at either of those times any just, reasonable, or probable cause of action or suit whatsoever against the said Richard for which he ought to have been arrested or imprisoned, or for which he was compellable to find bail: And the said Richard says, that the said William, Charles, and L. afterwards, to wit, in Easter term now last past in the said court of our lord the now king, before the king himself, became nonsuit in their said action or suit against the said Richard, as by the record of the judgment of nonsuit in that behalf now remaining in the said court at Westminster aforesaid, more fully appears, and the said action or suit of the said William, Charles, and L. is now wholly ended and determined, to wit, at L. &c. aforesaid: And the said Richard further says, that he by reason of the grievance so committed by the said William, Charles, and L. as aforesaid,

aforesaid, hath been greatly oppressed and injured, and put to great trouble, inconvenience, and expence, and his credit and reputation as a merchant hath been and is thereby greatly diminished, insomuch that divers persons, who before the time of his being so detained in custody at the suit of the said William, Charles, and L. were in the habit of trading and dealing with the said Richard, have from thence hitherto refused to have any further dealings with him, and particularly one Hugh O'Connor, who was about to have contracted with the said Richard for the sale of certain merchandizes for exportation by the said Richard to the said island of Madeira, to a large amount, has, in consequence of such detention of the said Richard in custody as aforesaid, wholly refused to deal with him, and the said William has thereby lost and been deprived of sundry great gains and profits which he would otherwise have made and acquired to himself, to wit, at L. &c. aforesaid: And the said Richard further complains, that the said defendants, *ad Count;* maliciously devising and intending to oppress and injure the said Richard, and to put him to great trouble, inconvenience, and expence, heretofore, to wit, on the said third of November, in the year aforesaid, at L. &c. aforesaid, wrongfully, maliciously, and without any reasonable or probable cause whatsoever, caused and procured the said Richard to be imprisoned, and kept and detained in prison at the suit of them the said defendants for a certain long space of time, to wit, the space of twenty-five days then next following, by virtue of a certain other writ before that time sued and prosecuted by the said defendant out of the said court of our said lord the king, before the king himself, against the said R. for the recovery of a certain other large sum of money, to wit, the sum of ninety-two pounds and upwards, pretended to be due to them as assignees of the estate and effects of one H. Jordan from the said Richard upon certain supposed promises and undertakings in the said last-mentioned writ specified, whereas in truth and in fact no sum of money whatsoever for which the said Richard was liable to be held to bail, was at the time of suing out the said last-mentioned writ, or of his last-mentioned imprisonment and detention, due or owing from him to the said defendants, as such assignees, or otherwise on any account whatsoever; and the said Richard says, that the said defendants have not prosecuted their said last-mentioned action or suit against him with effect, and the same is now wholly ended and determined, and that by reason of the premises last aforesaid he hath been greatly oppressed and injured, and put to great trouble, inconvenience, and expence, to wit, at L. &c. aforesaid, to his damage of one thousand pounds, and therefore he brings suit, &c. Pledges, &c. S. MARRYAT.

(a) It has been decided in the King's Bench, that an action will lie for saying of a person that he is a swindler, on error from C. B.

P. R. } MIDDLESEX, to wit. For that whereas the Declaration for
against } said plaintiff now is a good, true, honest, just, and charging the
J. W. T. } faithful subject of this kingdom, and as such hath al-plaintiff, who
office keeper, with having swindled him the defendant out of a share in a lottery-ticket-
was a lottery-

scription of the sheriff of Middlesex, *by which* said last-mentioned writ our said lord the king commanded the said sheriff that he should take the said plaintiff by the name and description of, &c. if he should be found in his bailiwick, and safely keep him, so that he might have him before our said lord the king, on, &c. wheresoever our said lord the king should then be in England, to answer the said defendant in a plea of *on the case* on promises, to the damage of the said defendant of sixty pounds as it was said, and that the said sheriff should have *then and there that writ*: † And the said plaintiff in fact further saith, that he the said plaintiff, after the suing forth of the aforesaid writ, and before he the said plaintiff had any notice or knowledge of the suing-out or prosecuting of the same, and also before the day appointed for the return of the same writ, and before the arrest of the said plaintiff under and by virtue of the same hereafter next-mentioned, to wit, on, &c. at, &c. aforesaid, paid to the said defendant the sum of forty pounds so due to him as aforesaid; yet the said plaintiff in fact further saith, that the said defendant, contriving and maliciously intending to hurt, injure, and prejudice him the said plaintiff, and to put him to great expence, and otherwise to harass and aggrieve him, afterwards, and after the said defendant had been and was so aforesaid paid and satisfied the said sum of forty pounds, for the recovery whereof he sued and prosecuted the aforesaid writ of *capias ad respondendum* against him the said plaintiff as aforesaid, to wit, on the twenty-first day of May, in A. D. 1781 aforesaid, at, &c. aforesaid, wrongfully, unjustly, and maliciously, and notwithstanding such payment and discharge of the said sum of forty pounds, for the recovery whereof he sued and prosecuted the said writ of *capias ad respondendum* as aforesaid, caused and procured the said plaintiff to be arrested and taken by his body by the aforesaid sheriff of the said county of Middlesex, under and by virtue of the aforesaid writ of *capias ad respondendum*, so sued out by the said defendant as aforesaid, and under colour and pretence of the same, and of the aforesaid cause of action therein specified, and to be kept and detained in custody under and by virtue of the said writ, and under colour and pretence of the same, and of the cause of action therein specified, for a long space of time, to wit, &c. and until he the said plaintiff was discharged from and out of custody by the consent and direction of the said defendant, to wit, at, &c. aforesaid; by means of which said premises he the said plaintiff was not only imprisoned in manner and for the time aforesaid, during all which time he suffered and underwent great anxiety of mind, and was hindered and prevented from following and transacting his necessary and lawful affairs and business, but he was also forced and obliged to lay out and expend divers sums of money, in the whole amounting to a large sum of money, to wit, the sum of ten pounds, in and about obtaining his release and discharge from his said arrest and imprisonment, and his credit in business was, hath been, and is, on occasion of the committing the grievance aforesaid by the said defendant, greatly shaken, impaired,

paired, and diminished, and he the said plaintiff also was, hath been, and is, on occasion of the committing, &c. otherwise greatly injured and damnified, to wit, at, &c. aforesaid: And whereas, ^{ad Count.} &c. [as in the first Count to the end of the recital of the writ at this † mark, omitting what is in Italic, then proceed as follows]; which said last-mentioned writ he the said defendant afterwards, and before the return thereof, or the time appointed for that purpose, to wit, on, &c. aforesaid, delivered to the then sheriff of the said county of Middlesex, to be executed in due form of law, to wit, at, &c.: And the said plaintiff in fact further saith, that after such delivery of the said last-mentioned writ to the said sheriff of the said county of Middlesex as aforesaid, to be executed as aforesaid, before he the said plaintiff had any knowledge or notice thereof, or of the suing out of the said writ against him, and also before the day appointed for the return of the said last-mentioned writ, before the arrest of the said plaintiff under and by virtue of the said writ hereafter next-mentioned, to wit, on, &c. at, &c. aforesaid, he the said plaintiff paid to the said defendant the sum of forty pounds, for the recovery whereof he sued out the said last-mentioned writ as aforesaid; by reason whereof the said defendant ought to have directed the said sheriff of the said county of Middlesex to whom he had so as aforesaid delivered the said writ for execution as aforesaid, not to arrest or take the said plaintiff under and by virtue of the said last-mentioned writ; yet the said defendant, well knowing the premises last aforesaid, but contriving to injure and prejudice him the said plaintiff, to put him to great expence, and otherwise to harass and aggrieve him, did not direct the said sheriff of the said county of Middlesex not to arrest and take the said plaintiff under and by virtue of the said last-mentioned writ, but wholly neglected so to do, whereby the said plaintiff was afterwards, and before the time appointed for the return of the said last-mentioned writ, to wit, on, &c. at, &c. and notwithstanding the said payment of the said sum of forty pounds for the recovery whereof the said last-mentioned writ was sued out as aforesaid, was arrested and taken into custody by his body by the said sheriff of the said county of M. under and by virtue of the said last-mentioned writ so delivered to him for execution as aforesaid, and under colour and pretence of the cause of action therein specified, and on that occasion was kept and detained in custody from thence for a long space of time, to wit, &c. and he the said plaintiff was released and discharged from and out of the custody of the said sheriff by the direction and consent of the said defendant; by means of which, &c. [*per quod* as in the first Count]: And whereas the said defendant heretofore, to wit, on, &c. at, &c. sued and prosecuted out of the said court of our said lord the now king, before the king himself, the said court, &c. against him the said plaintiff a certain other writ of our said lord the king, called a *capias ad respondendum*, directed to the then sheriff of the said county of M. by the description of the sheriff of M. by which said last-mentioned writ our said lord the king com-
Z 4
manded

manded and [recite the writ as in the first Count], which said last-mentioned writ the said defendant afterwards, and before the return thereof, or the time appointed for that purpose, to wit, on, &c. directed to T. S. esquire, and W. C. esquire, then sheriff of the aforesaid county of Middlesex, to be executed in due form of law, to wit, at, &c. aforesaid; and the said plaintiff in fact further saith, that after such delivery of the said last mentioned writ to the said T. S. and W. C. as such sheriff as aforesaid; to be executed as aforesaid, and before the arrest of the said plaintiff under and by virtue of the same writ hereafter mentioned, to wit, on, &c. he the said plaintiff fully satisfied and discharged the said cause of action or suit in the said writ specified, by then and there paying to the said defendant, by and with his assent and consent, a large sum of money, to wit, the sum of forty pounds, in full satisfaction and discharge of all such damages as he the said defendant had sustained; as well on the occasion of the non-performance of the said several promises and undertakings in the said last-mentioned writ specified, as of his costs and charges in and of the prosecution of the said writ; by reason whereof the said defendant ought to have prevented the said plaintiff from being arrested and taken into custody under and by virtue of the said last-mentioned writ, to wit, at, &c.; yet the said defendant, well knowing the premises last aforesaid, but contriving to injure and prejudice him the said plaintiff, and to put him to a great expence, and otherwise to harass and aggrieve him, did not in any manner whatever prevent the said plaintiff from being arrested and taken into custody under and by virtue of, &c. but therein wholly failed and made default; and suffered and permitted the said plaintiff to be, and after the said cause of action in the said last-mentioned writ aforesaid was discharged and satisfied as aforesaid, and before the time appointed for the . . . of the said writ, to wit, on, &c. at, &c. arrested and taken into custody by his body, by the aforesaid sheriff of M. to whom the said defendant delivered the said last-mentioned writ for execution as aforesaid, under and by virtue of, &c. and under colour and pretence of the aforesaid cause of action therein specified, and on that occasion to be kept and detained in custody from thence for a long space of time, to wit, &c. and until the said plaintiff was relieved and discharged from and out of the custody of the said sheriff, by the direction and consent of the said defendant; by means, &c. [as in the first Count].

V. LAWES.

Declaration for MIDDLESEX, to wit. W. M. late of, &c. was attached to
maliciously ac- answer R. S. P. in plea of trespass on the case, and thereupon, &c.;
cusing plaintiff that whereas the said plaintiff now is a good, &c. of this kingdom,
of felony, and and as such hath always from the time of his nativity hitherto be-
carrying him haved and governed himself; and until the time of the committing
before a justice of the peace, who committed him for re-examination, and on such examination committed him for
of the peace, trial; defendant afterwards at the sessions preferred an indictment to the grand jury, who re-
turned the same returned the same *ignoramus*. Counts for imposing felony and larceny.

the

the grievances hereafter mentioned, hath always been accepted, esteemed, and respected as such amongst all his neighbours and other good, &c. and hath never been guilty, nor until the committing of the grievance hereafter mentioned, been suspected to have been guilty of any felony, larceny, or robbery, or of any other such crime or offence: by means whereof he the said plaintiff, before the committing the several grievances hereafter mentioned, had deservedly gained and acquired to himself the good opinion and credit of all his neighbours and other good, &c. to whom he was known; yet the said defendant, well knowing the premises aforesaid, but contriving, &c. to hurt, injure, and prejudice the said plaintiff in his aforesaid good name, fame, credit, and reputation, and to cause him to be esteemed and respected amongst his neighbours and other good, &c. to be a felon and a thief, and to cause him to undergo the pains and penalties by the laws and statutes of this realm made and provided against and on those who are guilty of felony or larceny, and to cause him to be imprisoned, and kept and detained in prison, and to vex, disturb, and disquiet him, and make him undergo and suffer great hardships, pains, and labours both of body and mind, and otherwise to injure him, heretofore, to wit, on, &c. at, &c. falsely and maliciously, and without any reasonable or probable cause whatever alledged and objected against plaintiff, that he the said defendant did suspect that the said plaintiff had before then feloniously stolen away, taken, and carried away, divers, to wit, two ducks, the property of him the said defendant, and then and there, for the said supposed offence, falsely and maliciously, without, &c. arrested, and caused and procured the said plaintiff to be arrested by his body, and carried and conveyed him, and caused and procured him to be carried and conveyed in custody before one C. T. esq. then and still being one of the justices of our lord the king in and for the said county of Middlesex, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the said court, and to be examined by and before the said C. T. esquire, so being such justice as aforesaid, of, upon, and for the said supposed crime or offence, and then and there falsely and maliciously, and without, &c. caused and procured the said C. T. so being such justice as aforesaid, to commit the said plaintiff into the custody of the keeper of a certain prison of our said lord the king, in the county of Middlesex, to wit, at a certain prison of our said lord the king, called New Prison, Clerkenwell, and to make out and grant under his hand and seal, as such justice as aforesaid, a certain warrant or mandate, directed to the said keeper of the aforesaid prison or his deputy, bearing date on, &c. whereby the said justice commanded, authorised, and required the said keeper of the said prison, or his deputy, to receive into his custody the body of the said plaintiff for further examination as to the said offence imputed and charged upon him the said plaintiff as aforesaid, on Thursday morning then next, at ten of the clock, and him safely keep in his custody until he should thence be discharged

charged by due course of law, to wit, at, &c. aforesaid; and the said defendant also maliciously caused and procured the said plaintiff to be kept and detained in custody and in the aforesaid prison of our said lord the king, under and by virtue of the aforesaid warrant or mandate, from thence until and upon the day of

A. D. aforesaid, and during that time, to wit, on the said day of A. D. aforesaid, at Westminster aforesaid, and before the aforesaid justice, falsely and maliciously, and without, &c. again alledged and complained against him the said plaintiff, that he the said defendant did suspect that the said plaintiff had before then feloniously taken and carried away the aforesaid ducks of him the said defendant, and then and there maliciously, and without, &c. caused and procured the said C. T. so being such justice as aforesaid, to make and grant a certain other warrant under his hand and seal as such justice as aforesaid, bearing date, &c. and directed to the aforesaid keeper of the said prison, called New Prison, or his deputy, whereby he the said justice commanded and required, and authorised the said keeper, or his deputy, to detain in his custody the body of the said plaintiff so charged and accused before him the said justice as last aforesaid, and him safely keep in his custody until he should be discharged by due course of law: And the said plaintiff also falsely, and without any reasonable, &c. caused and procured the said plaintiff to be detained and kept in custody as well in the said prison called New Prison as aforesaid, as in a certain other prison of our said lord the now king, called Newgate, under and by virtue and in consequence of the said last-mentioned warrant or mandate, for a long space of time, and until his discharge hereafter mentioned, to wit, at W. aforesaid: And the said plaintiff in fact further saith, that whilst he the said plaintiff was so in custody as aforesaid, to wit, at the general sessions of the peace of our lord the king, holden in and for the county of M. at Hick's Hall, in Saint John-street, on Tuesday the fourteenth day of May, in the twenty-second year of the reign of lord George the Third, king of Great Britain, &c. before William Mainwaring, esquire, &c. &c. &c. and others their fellows, justices of our said lord the king assigned to keep the peace, and also to hear and determine, &c. committed in the said county, falsely and maliciously, &c. and without, &c. preferred and presented, and caused, &c. to be, &c. to the jurors of the grand inquest, then and there, to wit, at the said sessions sworn and charged to enquire for our lord the king and the body of the said county of Middlesex, a certain bill of indictment against the said plaintiff, by the name and description of, &c. charging and accusing, and purporting that the said plaintiff, on the twenty-ninth day of April A. D. 1782 aforesaid, feloniously stole the said ducks of the said defendant so by him alledged and insinuated to have been stolen by him the said plaintiff as aforesaid, which said bill of indictment the said jurors of the said grand inquest did then and there return into the said court of the said session so holden as aforesaid *not found*; whereupon the said plaintiff was then and there discharged from and out of custody; and

and the said plaintiff doth also aver, that he is not nor is in anywise guilty of the said supposed felony or offence so charged upon, alledged against, and imputed to him as aforesaid, to wit, at, &c.: And the said plaintiff in fact further saith, that the said defendant, further contriving and intending as aforesaid, at the aforesaid general sessions of the peace, holden in and for the county of Middlesex, at Hick's Hall, in St. John's-street, on, &c. in the twenty-second year, &c. before, &c. and others their fellows justices of our said lord the king assigned to keep the peace, &c. and also to hear and determine, &c. committed in the said county, falsely and maliciously, and without, &c. preferred and prosecuted and caused, &c. to the jurors of the grand inquest then and there, to wit, at the said session sworn and charged to enquire for our said lord the king and the body of the said county of Middlesex, a certain other bill of indictment against the said plaintiff, by the name, &c. of, &c. charging, accusing; and purporting that the said plaintiff, on the aforesaid day, &c. feloniously stole divers, to wit, two other ducks of the said defendant, which said last-mentioned bill of indictment the jurors of the said grand inquest did then and there return into the said court of the said session, so holden as aforesaid, "not found;" and the said plaintiff avers, that he was not, nor is, guilty of the said supposed felony in the said last-mentioned bill of indictment specified, and so charged upon and alledged against the said plaintiff as aforesaid, to wit, at, &c.: And the said plaintiff further saith, that the said defendant, further contriving and intending as aforesaid, on, &c. at, &c. falsely and maliciously, and without, &c. imposed the crime of felony on him the said plaintiff: [Add another like Count, only for larceny instead of robbery]; by means of which said several premises the said plaintiff is greatly hurt, injured, and prejudiced in his aforesaid good name, &c. and is brought into great scandal, ignominy, and disgrace amongst all his neighbours and other good, &c. and hath been taken and suspected to be a felon and a thief, and he the said plaintiff was also imprisoned and kept and detained in prison in manner and for the time hereinbefore mentioned, and suffered and underwent many and arduous troubles and labours both of body and mind, and during all which time he was hindered and prevented from managing, conducting, and transacting his necessary affairs and business, and was forced and obliged to lay out and expend a large sum of money in and about the obtaining his release from and out of custody as aforesaid, and in and about the defence of himself and the manifestation of his innocence in the premises as alledged and objected against him as aforesaid; and he the said plaintiff also was, hath been, and is, on occasion of the several premises aforesaid, otherwise greatly injured and damnified, to wit, at, &c.; wherefore he the said plaintiff saith he is injured, and hath sustained damage to the amount of two hundred pounds, &c.

V. LAWS.

Plaintiff obtained a verdict with 5l. damages.

Michaelmas

Michaelmas Term, 24. Geo. III.

Declaration for
accusing plain-
tiff of felony,
taking him up,
carrying him be-
fore a justice of
peace, who com-
mitted him; i-
dicting him at
the sessions,
which indict-
ment was tried
at the Old
Baile, and
plaintiff was ac-
quitted.

LONDON, to wit. J. C. complains of R. C. being, &c. ; for that whereas the said J. now is a good, honest, just, and faith-
ful subject of this realm, and as such, &c. and until the time of
committing the grievance hereafter mentioned, &c. had been
esteemed and respected as such amongst all his neighbours and
other good, &c. and hath never been guilty, nor until the com-
mitting, &c. been suspected to have been guilty of any felony,
larceny, or robbery, or any other such crime or offence, whereby
he the said plaintiff, before the committing of the several, &c.
had deservedly, &c. and other good, &c. to whom he was known;
yet the said defendant, well knowing, &c. but contriving, &c. to
hurt, injure, and prejudice the said plaintiff in his aforesaid good
name, &c. and to cause him to be esteemed, &c. amongst his
neighbours and other good, &c. to be a felon and a thief, and a
person guilty of larceny and robbery, and to cause him to under-
go the pains and penalties by the laws and statutes of this realm
provided, and inflicted on those who are guilty of felony, larceny,
and robbery, and to cause him to be imprisoned, and to be kept
and detained in prison, or otherwise to injure him, heretofore, to
wit, on, &c. falsely, &c. and without, &c. charged and accused
the said plaintiff with having feloniously stolen from the pocket of
the said defendant a certain handkerchief, the property of him the
said defendant, and then and there, that is to say, on, &c. at, &c.
falsely, &c. and without, &c. arrested and caused and procured,
&c. to be arrested and taken into custody of a constable for the
supposed offence, and afterwards, to wit, on, &c. wrongfully,
&c. and without, &c. forced and obliged the said plaintiff to go
and appear before a certain justice assigned to keep the peace of
our said lord the now king, that is to say, before A. B. esquire,
then and still being one of the justices of our lord the now king,
assigned to keep the peace of our lord the now king in and for the
county of Middlesex, and also to hear and determine divers felo-
nies and other misdeeds committed in the said county, and to be
examined by and before the said justice of and upon, and for, and
concerning the said offence, and then and there, that is to say,
on, &c. falsely, &c. and without, &c. caused and procured the
said justice to commit the said plaintiff to and into the custody of
the keeper of a certain prison of our said lord the king, to wit, a
certain prison called New Prison, and to make out and grant
under his hand and seal, as such justice as aforesaid, a certain
warrant and mandate, directed to the said keeper of the aforesaid
prison, or his deputy, and bearing date, &c. whereby he the said
justice commanded, authorized, and required the said keeper of
the aforesaid prison, or his deputy, to receive into their custody
the body of the said plaintiff, and him safely to keep in their cus-
tody until the said plaintiff should be thence discharged by due
course of law; and the said defendant did thereupon falsely, &c.
and without, &c. cause and procure the said plaintiff to be kept
and detained in custody, that is to say, as well in the said prison
called

called New Prison, as in a certain other prison of our said lord the king, called Newgate, otherwise and by virtue and in consequence of the said warrant or mandate, for a long space of time, and until his acquittal hereafter next mentioned, to wit, at, &c. : And the said plaintiff further saith, that whilst the plaintiff was so in custody as aforesaid, that is to say, “ at the general quarter sessions + of the peace of our said lord the king, holden for the county of Middlesex, at the sessions house for the said county, on, &c. in the twenty-third year of the reign of, &c. before W. M. esquire, &c. &c. and other their fellows, justices of our said lord the king, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, the defendant falsely, &c. and without, &c. indicted him the said plaintiff, and caused, &c. to be, &c. upon and for the said supposed offence hereinbefore mentioned, by the name and description of, &c. ; for that he the said plaintiff, on, &c. in the twenty-third, &c. with force and arms, at and in the parish and county last aforesaid, one linen handkerchief of the value of tenpence, of the goods and chattels of the said plaintiff, then and there being found, feloniously did steal, take, and carry away, against the peace of our said lord the king *his crown and dignity* :” And the said plaintiff further saith, that the said last-mentioned justices, afterwards, to wit, on the delivery of the king’s gaol of Newgate, holden for the county of Middlesex, at Justice Hall, in the Old Bailey, in the suburbs of the city of London, on, &c. in the twenty-third year, &c. before N. N. esquire, mayor of the city of London, F. B. esquire, one of the justices of our said lord the now king, assigned to hold pleas before the king himself, J. H. esquire, one of the justices of, &c. &c. and others their fellow justices of our said lord the king, assigned to deliver the said gaol of Newgate of the prisoners therein being, did, by their proper hands deliver there in the court of record a form of law to be determined the aforesaid indictment against him the said plaintiff, and the said defendant did falsely, &c. without, &c. prosecute the said indictment, and cause and procure the same to be prosecuted against him the said plaintiff, to wit, at, &c. until he the said plaintiff afterwards, to wit, at the same delivery of the said gaol of our said lord the king of Newgate, holden for the county of Middlesex, at Justice Hall aforesaid, on, &c. in the twenty-third, &c. before the said justices of our said lord the king above named, and others their fellow justices as aforesaid, was of the premises in the said indictment contained in due manner, and according to due course of law, by a jury of the country acquitted, to wit, at, &c. : And the said plaintiff in fact further saith, that the said defendant, further contriving and intending as aforesaid, heretofore, that is to say, at the general quarter sessions, &c. &c. [as in the first Count from this mark + to the end, omitting what is in Italic. 3d Count, for imposing the crime of felony on the plaintiff. 4th Count, for imposing the crime of larceny] : By means of which said several premises and other the prosecutions

2d Count, in
indictment only.

Conclusion.

and

and grievances hereinbefore mentioned and done, committed and carried on by the said defendant against the said plaintiff, he the said plaintiff was not only imprisoned, and kept and detained in prison, in manner and for the time aforesaid, during which he was prevented from carrying on his necessary and lawful affairs and business, but he hath also been greatly hurt, injured, and prejudiced in his aforesaid good name, &c. and forced and obliged to lay out and expend a large sum of money in and about the defence of himself and the manifestation of his innocence in the premises, and about the obtaining his release and discharge out of custody; and he also is and hath been, on occasion of the several premises aforesaid, otherwise greatly injured and damnified; to the damage, &c. one thousand pounds. V. LAWES.

Plaintiff obtained a verdict for 200*l*.

20. Geo. III.

Declaration for
maliciously ex-
hibiting an in-
formation a-
gainst the plain-
tiff, before the
commissioners
of excise.

LONDON, to wit. T. M. late of, &c. C. M. late of, &c. and E. C. late of, &c. were attached to answer T. P. in a plea of, &c.; for that whereas he the said plaintiff now is a good, &c. and from the time of his nativity hitherto hath always behaved and governed himself, to wit, at, &c.; yet the said defendant well knowing all and singular the premises, but contriving, and maliciously and wickedly intending, wrongfully and unjustly to harass, oppress, prejudice, aggrieve, and impoverish the said plaintiff, and to put him to great trouble and expence without any reasonable, &c. and of *their mere malice towards the said plaintiff*, and for their private lucre and gain, heretofore, to wit, on, &c. within the limits of the office of London for the duties of excise, to wit, at, &c. did falsely, &c. without, &c. exhibit and cause and procure to be, &c. to and before the commissioners and governors duly nominated and appointed by his said majesty for his receipt of the excise, a certain false and malicious complaint and information against the said plaintiff, in the words and to the tenor and effect following, that is to say, [here set out the information verbatim]; and the said plaintiff saith, that the said defendant did falsely, &c. and without, &c. prosecute, and cause and procure, &c. the said complaint and information so exhibited against him the said plaintiff as aforesaid, until and upon the day of, &c. when the said complaint and information came on to be heard, adjudged, and determined by and before three of the said commissioners and governors duly nominated, constituted, and appointed by his said majesty for his receipt of the excise, that is to say, at the said chief office in London for the duties of excise, to wit, at, &c.; and the said complaint and information was then and there by and before the said last-mentioned commissioners and governors duly heard, and upon the hearing thereof they the said commissioners and governors last-mentioned did then and there, to wit, on, &c. dismiss the said complaint and in-formation,

formation, the said plaintiff was then and there in due manner, and according to the course of the law discharged and acquitted, and the said complaint and information was then and there duly determined, to wit, &c.; by means of which said several premises he the said plaintiff was duly summoned and obliged to be and appear, and to make his defence before the said last-mentioned commissioners and governors, and was forced and obliged to lay out and expend, and did, &c. divers sums of money, in the whole, &c. in and about his said defence, and was forced to undergo and suffer, and did, &c. divers and many very great and arduous pains and labours of body and mind, and was by means of the premises aforesaid, hindered and prevented from conducting and transacting his necessary business for a long time, to wit, at, &c. and was, hath been, and is, on occasion of the premises, otherwise greatly injured and damnified, to wit, at, &c.: And the said plaintiff further says, that the said defendants, further contriving, &c. heretofore, to wit, on, &c. at the chief office, &c. to wit, at, &c. did falsely, and without, &c. exhibit and cause, &c. to and before , commissioners and governors duly nominated, &c. a certain other false, &c. complaint alledged to be made as well for his present majesty as the said E. C. and thereby falsely, &c. and without, &c. did inform, &c. and cause, &c. the said commissioners and governors lastly mentioned to be informed, that within three months then last past [recite the information to the end of the first forfeiture]; and the said defendants in and by the said last-mentioned complaint, on, &c. did falsely, &c. and without, &c. further inform, and cause, &c. the said commissioners, &c. lastly mentioned to be informed, that on, &c. and within the limits and jurisdiction aforesaid, the said plaintiff had in his custody [recite the information to the end of the 2d forfeiture]; and the said plaintiff further said, that the said defendants did falsely, &c. and without, &c. prosecute, &c. and cause, &c. said last-mentioned complaint, &c. [as in the first Count]: And the said plaintiff in fact further saith, that the said defendants, further contriving, &c. [as in the inducements to the first Count, omitting what is in *Italic*], heretofore, to wit, on, &c. [as in the second Count] did falsely, &c. exhibit, &c. to and before the commissioners, &c. a certain other false complaint, &c. against the said plaintiff, containing the false matters following, to wit, within three months [recite the information to the end of the first forfeiture]; and also, that on, &c. and within the limits, &c. [recite the information to the end of the second forfeiture]: and the said plaintiff in fact further saith, that the said defendants did falsely and without, &c. prosecute, &c. [as in the second Count to the end].

V. LAWS.

Damages 500l.

The first and second Counts I drew in their present form; the third varied in some respects, but was afterwards altered into its present form, supposing it would prevent a nonsuit in case plaintiff would not be enabled to establish malice;

lice; but the averment of the information being maliciously exhibited still remains. Upon the whole, as the declaration at present stands, it is too long by the 3d Count, which does not materially differ from the second, except in the instance before mentioned (on account

of which it may perhaps be exceptable), and the number of commissioners. No exception was taken to the declaration, but the defendants pleaded the general issue, and on the trial obtained verdict.

Declaration for maliciously charging the plaintiff with having stolen a quantity of hay, and causing him to be apprehended, and to give bail for his appearance at the quarter sessions, and for preferring a bill of indictment against the plaintiff, which the jury found no true bill.

MONMOUTHSHIRE, to wit. Edmund William Rees complains against George Williams, being, &c. of a plea of trespass on the case; for that whereas the said E. W. now is a good, true, honest, faithful, and worthy subject of this realm, and as such good, true, honest, faithful, and worthy subject of this realm from the time of his nativity hitherto hath always behaved and governed himself, and has for all the time aforesaid been held, esteemed, and reputed amongst all his neighbours and other good and worthy subjects of this realm to be a man of good name, fame, credit, and reputation, and has always for his lifetime past lived and continued free, untouched, unspotted, and wholly unsuspected of and from all and all manner of theft, larceny, robbery, or felony, or any other such hurtful crime; by reason of which said premises he the said E. W. before the time of committing the several grievances hereafter mentioned had deservedly gained the good opinion and esteem of all his neighbours and other worthy subjects of this realm to whom he was known, to wit, at Abergavenny, in the county aforesaid; yet the said George, well knowing the premises, but, greatly envying the happy state and condition of the said E. W. and contriving and maliciously intending wrongfully and unjustly to injure the said E. W. in his aforesaid good name, fame, credit, and reputation, and to bring him into public scandal, infamy, and disgrace with and amongst all his neighbours and other good and worthy subjects of this realm, and to cause and procure the said E. W. to be arrested and imprisoned without any reasonable or probable cause whatsoever, and thereby to make the said E. W. to suffer and undergo many great and arduous troubles both of body and mind, and to put him to great charges and expences, and to impoverish and wholly ruin him, heretofore, to wit, on the twenty-first of October 1786, at A. aforesaid, in the county aforesaid, falsely and maliciously, without any reasonable or probable cause, affirmed that the said E. W. had mown hay, and that he suspected him of taking the same away from the lands of the said George, and then and there falsely and maliciously, and without any reasonable or probable cause, caused the said E. W. by reason of the aforesaid pretended suspicion of felony, to be taken and arrested by his body, and in custody to be detained for a long time, to wit, for the space of three days, and maliciously and unjustly afterwards, to wit, on the twenty-first of November, in the year aforesaid, at A. aforesaid, in the county aforesaid, caused the said E. W. to being in custody as aforesaid,

to be brought before one Hanbury Davies; clerk, then and still being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county of M. and also to hear and determine divers felonies, trespasses, and misdemeanors committed within the same county; by reason of the aforesaid false affirmation and pretended suspicion concerning the feloniously taking of the said hay of the said George, and caused the said E. W. then and there before the said H. D. concerning the premises aforesaid to be questioned and examined, and the said E. W. then and there to be detained until the said E. W. then and there, together with one P. E. the bail of the said E. W. had acknowledged and signed a certain recognizance to our said lord the king, to wit, the aforesaid E. W. in the sum of twenty pounds of lawful money of Great Britain, and the said P. E. in the sum of ten pounds of like lawful money, with condition that the said E. W. should appear at the then next general quarter sessions of the peace for the aforesaid county of M. to be holden to answer to an indictment to be preferred against him by the said G. for mowing and cocking a certain quantity of hay, value tenpence, and on a suspicion of feloniously conveying the same away from the lands of the said G. and not depart without leave of the court; at which said general quarter sessions of the peace, held at A. aforesaid, in and for the county aforesaid, on the tenth of January, in the twenty-seventh year of the reign of our lord the now king, before J. H. W. R. L. T. H. T. E. D. T. W. J. and W. R. junior, esquire, and other justices of our said lord the king for the county aforesaid, and also assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed and done in the said county, the said E. W. appeared, and the said G. then and there, to wit, on the same tenth of January, in the twenty-seventh year of the reign of our lord the king aforesaid, at the aforesaid general quarter sessions of the peace for the county aforesaid, before the justices aforesaid, maliciously, and without any reasonable or probable cause, exhibited a certain bill of indictment in writing against the aforesaid E. W. by the name of, &c. containing in it these false and scandalous matters following, to wit, "Monmouthshire, the jurors of our lord the king on their oath present, that E. W. R. of, &c. on the first of January, in the twenty-seventh year of the reign of our sovereign lord George the Third now king of Great Britain, &c. with force and arms, at the parish aforesaid, in the county aforesaid, a small quantity of hay, of the value of sixpence, of the goods and chattels of one G. W. then and there being found, then and there feloniously did steal, take, and carry away against the peace of our said lord the king, his crown and dignity; and the said G. falsely and maliciously, and without any reasonable or probable cause, at the same general quarter sessions of the peace held in and for the county aforesaid, before the justices aforesaid, assigned as well to keep the peace of our said lord the king in the county aforesaid as to hear and determine divers felonies, trespasses, and

Indictment.

Alleging that the plaintiff had been discharged by the grand jury's not finding the bill was sufficient to shew a legal end to the prosecution, which is necessary.

per Buller J. in Morgan v. Hughes, Durn. & East, 2. vol. 232.

ad Count.

misdeemeanors in the said county, at A. aforesaid, in the county aforesaid, preferred the said bill of indictment to the jury then and there sworn, and attempted and endeavoured as much as in him lay to get the same by the said jury to be found a true bill, when in truth and in fact the matter therein contained was then and there wholly false, and so it then and there appeared to the said jury, who after having examined all such witnesses as the said G. thought fit to produce thereon, returned to the said court at the same general quarter sessions of the peace held in and for the said county no true bill; and thereupon the said E. W. and the said other persons so bound with him in the said recognizance as aforesaid were then and there duly discharged by the court of the same sessions from their aforesaid recognizance, and the aforesaid prosecution is wholly ended and determined, to wit, at A. aforesaid, in the county aforesaid: And the said G. of his further malice against the said E. W. and further contriving and intending as aforesaid, heretofore, to wit, on the said twenty-first of November, in the twenty-seventh year aforesaid, at A. aforesaid, falsely and maliciously, and without any reasonable or probable cause, charged and accused the said E. W. with the suspicion of having stolen a certain other quantity of hay of him the said G. and thereupon the said G. afterwards, to wit, on the same day and year last aforesaid, at A. aforesaid, falsely and maliciously, and without any reasonable or probable cause, caused and procured the said E. W. to be arrested by his body, and carried and conveyed in custody before the said H. D. so being such justice as aforesaid, and to be examined by and before such justice touching and concerning the said last-mentioned supposed crime, and to be thereupon bound and to procure bail for his appearance at the then next general quarter sessions of the peace of our said lord the king to be holden in and for the said county, to answer to an indictment for the said last mentioned supposed crime, whereby the said E. W. was forced to appear, and did actually appear at the said last-mentioned sessions, and the said G. at the same sessions, held on the tenth of January, in the year aforesaid, at A. aforesaid, maliciously, and without any reasonable or probable cause, did then and there prefer a bill of indictment against the said E. W. for the said last-mentioned supposed offence to the jury sworn at the said last-mentioned sessions, which said last-mentioned bill of indictment the said jury then and there found no true bill, and thereupon the said E. W. was then and there discharged by the court of the same sessions, and the said last-mentioned prosecution is wholly ended and determined, to wit, at A. aforesaid, in the county aforesaid; by reason of which said premises the aforesaid E. W. is not only extremely hurt, injured, and damnified in his good name, fame, credit, and reputation by the said G. but hath also fallen into great suspicion of having committed the aforesaid felony with very many true and faithful subjects of this realm to whom the innocency of the said E. W. in this behalf was unknown, and the subjects aforesaid on that account have withdrawn them-

themselves from the company and connection of the said E. W. as from the perpetrator of the pretended base crimes aforesaid, and with the said E. W. altogether object and refuse to engage or to have any concern whatsoever as before they were accustomed: And the said E. W. has been compelled and obliged to undergo great pain and trouble both of body and mind, and to lay out and expend divers large sums of money in this behalf, and to clear himself from the charges and accusations of the said G. thereupon made as aforesaid; and by reason of the premises the said E. W. has wholly lost and been deprived of divers great gains and profits which he in his lawful occupation and employment might otherwise honestly and lawfully have gained and procured, at A. aforesaid; to the damage of the said E. W. of one hundred pounds; and therefore he brings suit, &c. Pledges, &c. W. WALTON.

REES } MONMOUTHSHIRE, to wit. Edmund
 against } William Rees complains of George Rees, being, a malicious pro-
 WILLIAMS. } &c.; for that the said George, devising and mali- secution for a
 ciously intending to aggrieve and oppress the said E. W. and to forcible entry,
 subject him to the punishment provided by the laws against persons on which plain-
 guilty of forcible entries, and to deprive him of his liberty, and to ed, and appre-
 put him to great charges and expence, did, at the general quarter hended, and af-
 sessions of the peace of our sovereign lord the king, holden at the terwards acquit-
 town of Abergavenny, in and for the county aforesaid, to wit, on ted by the jury.
 Wednesday the tenth day of January, in the twenty-seventh year of the reign of our said sovereign lord the now king, and in the year of Our Lord 1787, by and before T. H. W. R. L. T. H. esquire, and other justices of our said lord the king in the county aforesaid, and also assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed and done in the said county, falsely and maliciously, and without any reasonable or probable cause whatsoever, did cause and procure the said E. W. to be indicted by the name of E. W. R. late of the parish of A. in the said county of M. farrier, for that the said G. W. late of the parish of M. in the said county of M. yeoman, on the twenty-first of October, in the twenty-seventh year of the reign of our sovereign lord George the Third, now king of Great Britain, &c. was possessed of certain pieces or parcels of land with the appurtenances, situate, lying, and being in the parish of M. in the said county of M. with force and arms, and with strong hand, unlawfully did enter, and the said G. W. from the possession of the said land with the appurtenances aforesaid, then and there, with force and arms, and with strong hand, unlawfully did expel and put out to the great damage of the said G. W. and against the form of the statute in that case made and provided, to wit, at the town of Ush, in the said county: *And the said G. falsely and maliciously, and without any reasonable or probable cause whatsoever, afterwards, to wit, on the said eighteenth day of April, in the twenty-seventh year aforesaid, at the town of Ush aforesaid, in the said*
 A a a county,

county, maliciously, and under colour and pretence of the aforesaid indictment, and pretend d offence therein contained, caused the said E. W. to be apprehended and kept and detained in custody for a long space of time, to wit, for the space of forty-eight hours, and until the said E. W. found security to answer to the said indictment under and by virtue of a certain process issued out of the same court of quarter sessions against the said E. W. upon the said indictment, and the said G. then and there falsely and maliciously, and without any reasonable or probable cause or pretence whatsoever, prosecuted, and caused and procured to be prosecuted the said indictment against the said E. W. until the said E. W. afterwards, to wit, at the general quarter sessions of the peace of our said sovereign lord the king, holden at the said town of Ush, in and for the county aforesaid, to wit, on Wednesday the eighteenth day of April, in the twenty-seventh year of the reign aforesaid, in the said year of Our Lord 1787, by and before R. S. R. L. D. T. esquires, and other justices of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses, and misdemeanors committed and done in the said county, was lawfully and in due manner acquitted thereof by a jury of the same court, and discharged therefrom by the said court, and the aforesaid prosecution is wholly ended and determined, to wit, at the town of Ush aforesaid, in the county aforesaid; and the said E. W. avers that he was not guilty of the offence aforesaid in the said indictment laid to his charge; by reason of which said premises the said E. W. hath necessarily expended and laid out a large sum of money, to wit, the sum of one hundred pounds, in procuring security for his said appearance to answer the said indictment, and to hinder himself being imprisoned by reason of the said indictment, and in and about his defence thereto, and getting himself acquitted and discharged from the premises therein laid to his charge, to wit, at the town of Ush aforesaid, in the county aforesaid: And the said G. of his further malice against the said E. W. and further devising and maliciously intending to aggrieve and oppress the said E. &c. &c. &c. &c. [as in the first Count, omitting the words in Italic.] Drawn by Mr. GRAHAM.

Declaration against defendant for maliciously indicting plaintiff of perjury in an affidavit made by him in support of his bill against one A. B. (against whom he had brought an action for the recovery of it), which by rule of B. R. was referred to the master to be taxed, and which indictment plaintiff removed by *cartiorari* into E. R. where, upon trial, he was acquitted.

MIDDLESEX, to wit. W. A. gentleman, complains of sir W. Y. barr. and A. S. being in the custody, &c. of a plea of trespass on the case; for that whereas the said W. A. now is a good, true, honest, just, and faithful subject of this realm, and as such from the time of his nativity hath hitherto always behaved, had, and governed himself, and hath always, until the committing the grievance hereinafter mentioned, been said, reputed, accepted, and esteemed as such amongst all his neighbours and all other persons to whom he was any ways known, and has never yet been

guilty,

guilty, or until the committing of the grievance hereinafter mentioned been suspected to have been guilty of any kind of perjury, subornation of perjury, or any other such hurtful crime; by means of which said premises, he the said W. A. before the false, scandalous, and malicious prosecution hereafter mentioned to have been commenced and carried on against him by the said sir W. and A. had deservedly obtained and procured to himself the benevolence, good opinion, and credit of all his neighbours and other worthy subjects of this kingdom to whom he was any ways known, to wit, at Westminster, in the county of Middlesex aforesaid; yet the said sir W. and A. well knowing all and singular the premises aforesaid, but greatly envying the happy state and condition of the said W. A. and contriving and maliciously and unlawfully intending to hurt, injure, and prejudice the said W. A. in his character and reputation, and to deprive him of his good name and credit, and to cause him to be esteemed and reputed amongst his neighbours and other worthy subjects of this kingdom to be a person guilty of perjury, and to cause him to undergo the pains and penalties by the laws and statutes of this realm made and provided against persons guilty of perjury, and to cause him to be imprisoned, and to be kept and detained in prison, and to put him to great charge and expence, and to vex, disturb, and disquiet him, and to make him undergo great hardships, pains, and labours both of body and mind, and to ruin him, heretofore, that is to say, on Monday, the day of , in the nineteenth year, &c. at the general sessions of oyer and terminer of our said lord the king, holden for the county of Middlesex, at Hicks's Hall, in Saint John's-street, in the said county, before sir John Hawkins, knight, J. B. J. C. esquires, and others their fellow justices of our said lord the king, assigned by his majesty's letter patent under the great seal of Great Britain directed to the same justice before-named and others in the said letters named to inquire more fully the truth by the oath of good and lawful men of the said county of Middlesex, and by the ways, means, and methods by which they should or might better know (as well within liberties as without) by whom the truth of the matter might be better known of all treason, misprisions of treason, insurrections, rebellions, counterfeittings, clippings, wastings, falsityings, and other falsities of money of Great Britain and other kingdoms and dominions whatsoever, and of all murders, felonies, manslaughters, killings, burglaries, rapes of women, unlawful meetings, conventicles, unlawful uttering of words, assemblies, misprisions, confederacies, false allegations, trespasses, riots, routs, detentions, escapes, contempts, falsities, negligencies, concealments, maintenances, oppressions, champarties, deceit, and all other evil doings, offences, and injuries whatsoever, and also the accessaries of them, within the county aforesaid (as well within liberties as without), by whomsoever and in what manner soever done, committed, or perpetrated, and by whom, or to whom, when, how, and after what manner, and of all other articles and circumstances

concerning the premises, and every of them, or any of them, in any manner whatsoever, and the said treasons and other the premises to hear and determine according to the laws and customs of England, falsely, and maliciously, and unlawfully, and without any reasonable or probable cause whatsoever, indicted, and falsely, and maliciously, and wilfully, and without any reasonable or probable cause whatsoever, caused and procured to be indicted the said W. A. for that one Silvanus Lake, heretofore, that is to say, on the ninth of July, in the year of Our Lord 1771, at Taunton, in the county of Somerset, was indebted to the said W. A. in the sum of of, &c. as well for the sum of of like lawful money before that time paid and advanced to William Bridge as for divers other sums of money paid and advanced by the said W. A. and divers other persons for and on the account of the said Silvanus Lake; and the said S. Lake being so indebted as aforesaid, afterwards, to wit, on the same day and year aforesaid, at T. aforesaid, in the said county of Somerset, in consequence thereof made his certain promissory note in writing, subscribed with the proper hand writing of him the said S. L. by which said note the said S. did promise to pay unto the said W. A. or order the sum of pounds, with its lawful interest, for value received the ninth of July 1771, and that afterwards, that is to say, on the sixteenth of July, in the year 1774, the said S. L. being as well indebted to the said W. A. for the said sum of pounds so due upon the said promissory note of him the said S. as for divers other sums of money, amounting in the whole to the sum of pounds, by his certain writing obligatory, bearing date the same sixteenth of July, in the said year of Our Lord 1774, and sealed with the seal of him the said S. did acknowledge himself to be held and firmly bound to the said W. A. in the penal sum of pounds, conditioned for the payment of the said sum of pounds, and that afterwards, that is to say, in the term of Saint Hilary, in the year of Our Lord 1775, and in the fifteenth year of, &c. now king of Great Britain, &c. the said W. A. sued the said S. L. in a plea of debt by virtue of the said writing obligatory in the said court of our said lord the king of the bench, at Westminster aforesaid, in the county of Middlesex; and such proceedings were thereupon had, that the said W. A. afterwards, to wit, in the said term of Saint Hilary, in the fifteenth year aforesaid, by the judgment of the same court, recovered as well his said debt as his damages on account of the detaining of the said debt to eighty shillings: And that afterwards, that is to say, on the twelfth of February, in the term of Saint Hilary, in the year of Our Lord 1776, and in the sixteenth year of the reign of our said sovereign lord the king, a certain rule of the court of our said lord the king of the bench at Westminster aforesaid, in the said county of Middlesex, was made in the said suit between the said W. A. plaintiff, and the said S. L. defendant, by which said rule it was ordered by the same court that it should be referred to one of the prothonotaries of that court, to tax the plaintiff's bill of costs mentioned in the defendant's affidavit then
read

read in the said court, and then to calculate, settle, and ascertain what was due for plaintiff's interest and costs on the bond given by the defendant to the said plaintiff mentioned in the said affidavit, and to take an account, settle, and ascertain what, if any thing, was due and owing from the said defendant to the plaintiff, the prothonotary, in taking such account, making all just allowances, and that the plaintiff should repay to the defendant what should appear on the taking such account to have been overpaid, and that the plaintiff should deliver up all deeds, papers, and writings in his custody belonging to the said defendant: And the said W. A. afterwards, to wit, on the fifth of June, in the year of Our Lord 1777, did exhibit to the court of our lord the king of the bench at Westminster a certain affidavit of him the said W. A. duly sworn, with a certain paper writing thereto annexed, purporting to be the account of the said S. L. with the said W. A. which said affidavit and paper writing remain affiled in the said court of our said lord the king of the bench at Westminster, and that the said W. A. wickedly and maliciously contriving and intending the said S. L. unlawfully to aggrieve and oppress, and from the said S. L. divers large sums of money injuriously, unjustly, and unlawfully to compel the said S. L. to pay divers large sums of money to the said W. A. on the fifteenth of March, in the eighteenth year, &c. and in the year of Our Lord 1778, at the parish of Saint Giles's in the Fields, in the said county of M. came in his own proper person before sir William De Grey, knight, then being the chief justice of our said lord the king of the bench, and was then and there duly sworn, and did take his corporal oath upon the holy gospel of God before the said sir William De Grey, so being such chief justice as aforesaid (he the said sir William De Grey then and there having sufficient and competent power and authority to administer the said oath in that behalf to the said W. A.); and the said W. A. being so sworn, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there, to wit, on the said fifth of March, in the eighteenth year aforesaid, and in the said year of Our Lord 1778, at the said parish of Saint Giles's in the Fields, in the said county of Middlesex, upon his oath aforesaid, before the said William De Grey, falsely, maliciously, wickedly, wilfully, and corruptly did say, depose, swear, and make affidavit in writing, amongst other things therein contained, in substance and to the effect following, that is to say, "That on or about the sixteenth of July 1774, when an account was settled or liquidated between this deponent (meaning himself the said William Alexander) and the defendant (meaning the said S. L.), wherein this deponent (again meaning himself the said W. A.) inserted the following *item*, April the second, paid Mr. William Bridge seven pounds, and charged three years interest, eight pounds one shilling (meaning seven pounds principal money, and one pound one shilling interest thereof to the said sixteenth of July, in the said year of Our Lord 1774). The said defendant (meaning the said S. L.)

did not then pretend that the same (meaning the said sum of seven pounds so paid to the said W. B. by the said W. A. for and on account of the said S. L.) made a part of a promissory note given to this deponent (meaning himself the said W. A.) by defendant (meaning the said S. L.) for forty-one pounds fourteen shillings (meaning the said promissory note so given as aforesaid by the said S. L. to the said W. A. on the ninth day of July, in the said year of Our Lord 1771), but saith that he the said defendant (meaning the said S. L.) then insisted that he himself (meaning the said S. L.) had paid the same (meaning the said sum of seven pounds) to the said W. B. (meaning the said W. B.); and this deponent (meaning himself the said W. A.) saith that the said forty-one pounds fourteen shillings (meaning the said sum of forty-one pounds fourteen shillings, for and in consideration of which the said promissory note was so given as aforesaid) was actually paid to or for the use of the said defendant (meaning the said S. L.), and that the said sum of seven pounds so paid to the said W. B. by this deponent (meaning himself the said W. A.) made no part thereof (meaning that the said sum of seven pounds so paid to the said W. B. for and on account of the said S. L. was not included in, and did not constitute a part of the said sum of forty-one pounds fourteen shillings for which the said S. L. gave his said promissory note as aforesaid, on the ninth day of July, in the year of Our Lord 1771); and this deponent (meaning himself the said W. A.) also saith that he (meaning himself the said W. A.) did not receive any other sum or sums of money whatsoever of or from the said defendant (meaning the said S. L.), or of or from any other person or persons whatsoever for or on his account (meaning the account of him the said S. L.) at any time or times whatsoever between the month of November 1774 and the month of June 1775, other than and except such sums as are set forth in the paper writing or account annexed to the affidavit of this deponent (meaning himself the said W. A.), heretofore made and now affiled in this cause (meaning the said paper writing or account affixed to the said affidavit of him the said W. A. affiled in said cause in said court of our said lord the king of the bench and sworn on the fifth of June, in the year of Our Lord 1777; and this deponent (meaning himself the said W. A.) saith that he (meaning himself the said W. A.) actually paid two several sums of and for the said defendant (meaning the said S. L.) to Mr. R. J. of, &c. to two quarters of years rent due to P. T. esquire, in respect of Mear Farm, the one due the twenty-fifth of September 1774, and the other on the twenty-fifth of March 1775; and that he (meaning himself the said W. A.) never received the same (meaning the said two sums of and so paid to the said R. J. by him the said W. A. for and on the account of the said S. L.), or any part thereof, or any other money from the said defendant (meaning the said S. L.) or any other person on his account or for his use (meaning on the account or for the use of the said S. L.) between the said month of November 1774 and the said month of June 1776, or at any other

other time subsequent to the sixteenth of July 1774, other than and except as aforesaid (meaning except such sums as are set forth in the paper writing or account annexed to the said affidavit of him the said W. A. sworn on the said fifth of June aforesaid), without giving a receipt or some other acknowledgment for the same, as by the said affidavit as sworn on the said fifth day of March, and remaining affiled in the said court of our said lord the king of the bench at Westminster, in the county of Middlesex, more fully appears:—

Whereas in truth and in fact the said S. L. on the sixteenth day of July, in the said year of Our Lord 1774, when the said account in the said last affidavit mentioned was so settled and liquidated between the said W. A. and the said S. L. wherein the said W. A. inserted the said item, “April second, paid Mr. William Bridge seven pounds, and charging three years interest, eight pounds one shilling,” did then pretend, and did then and there assert and maintain that the said sum of seven pounds so paid to the said W. B. on the second day of April, in the said year of Our Lord 1771, by the said W. A. for and on account of the said S. L. did make a part of the said promissory note given by the said S. L. to the said W. A. for pounds in the said last-mentioned affidavit mentioned: And whereas in truth and in fact the said S. L. did not then or at any other time insist that he himself the said S. L. had paid the said pounds, or any part thereof, to the said Mr. W. B. or to any person on his account: And whereas in truth and in fact the said sum of seven pounds so paid to the said W. B. by the said W. A. for and on the account of him the said S. L. did make a part of the said sum of for which said sum of the said note was so given as aforesaid by the said S. L. to the said W. A.: And whereas in truth and in fact the said W. A. did receive certain sums of money for and on the account of the said S. L. between the month of November 1774 and the month of June 1775 other than and except such sums as are set forth in the said paper writing or account annexed to the affidavit of the said W. A. heretofore first made and now affiled in the said cause, and sworn on the fifth day of June, in the said year of Our Lord 1777, that is to say, the said W. A. did receive a certain sum of of and from one J. Kingdom, on the twenty sixth of December, in the year of Our Lord 1774, in the parish of , in the said county of Somerset, for and on the account of the said S. L. which said last-mentioned sum of pounds is not set forth in the said paper writing or account annexed to the said first affidavit of the said W. A. made and affiled in the said cause: And whereas in truth and in fact the said W. A. did also receive another sum of of and from one John Day, on the eighth day of April, in the said year of Our Lord 1775, at Bridgewater, in the said county of S. for and on the account of the said S. L. which said last-mentioned sum of is not set forth in the said paper writing or account annexed to the said first affidavit of the said W. A. made and affiled in the said cause: And whereas in truth and in fact for the payment of for the said S. L. by the said W. A. to the said Mr.

R. J.

R. J. for the said quarter of a year's rent due to the said P. T. esquire, in respect of the said farm called Mear Farm, on the twenty-fifth of December, in the year of Our Lord 1774, the said W. A. did receive of and from the said J. Kingdom, and the said J. Kingdom did actually pay and give to the said W. A. for and on the account of the said S. L. on said twenty-sixth day of December, in said year of Our Lord 1774, at the parish of aforesaid, in said county of S. between the month of November 1774, and the said month of June in the year of Our Lord 1775, the sum of of, &c. which said last-mentioned sum of is not mentioned or expressed in the said affidavit of the said W. A. sworn on said fifth of March, in the year of Our Lord 1778: And whereas in truth and in fact for the payment of the said sum of for the said S. L. by the said W. A. to the said Mr. R. J. for the said quarter of a year's rent due to the said P. T. esquire, in respect of the said farm called Mear Farm, on said twenty-fifth day of March, in the said year of Our Lord 1775, the said John Day did pay to the said W. A. and the said W. A. did receive from the said J. D. for and on the account of the said S. L. on the said eighth of April, in the said year of Our Lord 1775, at Bridgewater, in the said county of S. between the said month of November, in the year of Our Lord 1774, and the said month of June, in the said year of Our Lord 1775, another sum of of like lawful money of Great Britain, which said last-mentioned sum of is not mentioned or expressed in said affidavit of the said W. A. on said fifth day of March, in said year of Our Lord 1778: And so the jurors aforesaid, upon their oath aforesaid, did say, that the said W. A. on said fifth day of March, in the said year of Our Lord 1778, and in the eighteenth year of the reign of our sovereign lord the now king, at the said parish of Saint Giles's in the Fields, in the said county of Middlesex, before the said sir William de Grey, so being such chief justice as aforesaid, he said sir William de Grey then and there having competent and sufficient power and authority to administer the said oath to the said William in that behalf falsely, maliciously, wickedly, wilfully, corruptly, on his oath aforesaid, in manner and form aforesaid, did commit wilful and corrupt perjury, to the great damage and oppression of the said S. L. to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the said W. A. further saith, that the said sir W. and Abraham falsely, maliciously, and unlawfully, and without any reasonable or probable cause whatsoever, prosecuted, and falsely, and maliciously, and unlawfully, and without any reasonable or probable cause whatsoever, caused and procured to be prosecuted said indictment against said W. A. to wit, at the general sessions aforesaid, until the said indictment, with all things touching the same, was afterwards, to wit, in the term of the Holy Trinity, in the nineteenth year of the reign of our lord the now king, by virtue of his majesty's writ of *certiorari*, before then sued and prosecuted out of the court of our lord the now king, before the king himself, at

Westminster, in the said county of Middlesex, by and at the instance of the said W. A. directed to the said sir John Hawkins, knight, T. C. J. B. and J. C. esquires, duly removed, and brought into the said court of our said lord the king, before the king himself (the said court then and still being at Westminster, in said county of Middlesex), there to be determined; and the said sir William and Abraham falsely, maliciously, and unlawfully, and without any reasonable or probable cause whatsoever, prosecuted, and caused and procured to be prosecuted the said indictment against the said W. A. in the said court of our said lord the now king, before the king himself (the said court then and still being held at Westminster, in the said county of Middlesex), from the said time of said removal thereof until the said W. A. afterwards, to wit, on the third day of July, in the year of Our Lord 1779, at Westminster aforesaid, was thereof in due manner, and according to a due course of law, by a jury of the said county of Middlesex, acquitted; by means of the prosecution of which said indictment, and of the premises touching and concerning the same, the said W. A. is greatly hurt, injured, lessened, and prejudiced in his good name, fame, and credit, and has been brought into great scandal, ignominy, and disgrace amongst his neighbours and other good and worthy subjects of this kingdom, and has been by them taken, reputed, and esteemed to be a person guilty of the heinous crime of perjury, and was imprisoned and detained in prison for a long time, and was obliged to enter into a recognizance with sufficient sureties for his personal appearance to answer to the said indictment; and also by means of the said malicious prosecution was necessarily forced and obliged to lay out and expend, and did lay out and expend divers sums of money, in the whole amounting to a large sum, to wit, the sum of one thousand pounds, in and about his defence, and the obtaining his said acquittance and discharge from his said recognizance, and from other the premises aforesaid, and to undergo many and very great and arduous troubles and labours both of body and mind in and about the defending himself in the premises and the manifestation of his innocence, and was hindered and prevented from following and transacting his necessary affairs and business for a long time, to wit, during all the time aforesaid, to wit, at Westminster aforesaid; to the said W. A. his damage of ten thousand pounds; and therefore he brings suit, &c.

J. MORGAN.

PETER MAYSON complains of E. F. being, &c.; for Declaration for that whereas the said P. now is, and at the several times hereinafter mentioned, and long before was a schoolmaster, and kept a school for the education and instruction of youth, to wit, at Froome, in the county of Somerset: And whereas before the committing the grievance next hereinafter mentioned, one E. Fryer, an infant under the age of twenty-one years, to wit, about the age of four-
being a *babeas corpus* directed to the plaintiff to bring up the body of an infant under his tuition before lord Mansfield, and
 thereby putting him to great expence.

tccn

teen years, had been placed under the care and custody of the said P. as a scholar in his said school by J. S. and S. S. to be by him educated and maintained, and at the time of committing the grievance next hereinafter mentioned continued and was under the care and custody of the said P.; yet the said E. F. well knowing the premises, but contriving and wrongfully, maliciously, and injuriously intending to injure the said P. and to put him to great and unnecessary expence, on the thirteenth of March 1776, and wrongfully, and without any reasonable or probable cause, prosecuted and sued out, and caused to be prosecuted and sued out of the court of our sovereign lord the king, before the king himself, at Westminster, a certain writ of *habeas corpus*, by which said writ the said P. was commanded that he should have before William lord Mansfield, chief justice, assigned to hold pleas before our said lord the king, at his chambers in Serjeant's Inn, Chancery Lane, London, immediately after the receipt thereof, the body of the said E. F. an infant, detained in the custody of the said P. as it was said, together with the day and cause of his taking and detaining, by whatsoever name the said E. F. was called, in the same to undergo and receive all and singular such things as the said chief justice should then and there consider of him in that behalf, and that he should have then and there the said writ: And the said E. F. further contriving and wrongfully and maliciously intending as aforesaid, afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the said county, served and caused to be served the said writ on the said P. whereby the said P. afterwards, to wit, on the same, &c. was compelled and obliged to carry and convey the said E. F. from F. in the county of Somerset, to London aforesaid, before the said W. lord M. the chief justice aforesaid; and thereupon the said E. F. on his own election, and by permission of the said chief justice returned with the said P. from L. aforesaid to F. aforesaid, in said county of Somerset: And the said P. in fact says, that by means of the premises he the said P. was put to great labour and expence, and obliged to lay out and expend, and did lay out and expend a large sum of money, to wit, the sum of , in and about the carrying and conveying the said E. F. from Froome aforesaid to London aforesaid, and from London aforesaid to Froome aforesaid, that is to say, at Westminster aforesaid, in the said county: And whereas also before and at the time of committing the grievance hereinafter next mentioned the said E. F. then an infant, was under the care and custody of the said P. as a scholar in his said school, to be by the said E. there educated and maintained; yet the said defendant, well knowing the premises last aforesaid, but contriving and wrongfully and injuriously intending to injure the said P. and to put him to great and unnecessary expence, afterwards, to wit, on the same, &c. at Westminster aforesaid, in the county of Middlesex aforesaid, wrongfully and injuriously, and under the false pretence that E. F. R. *deceased, the father* of the said E. F. an infant, had by his last will and testament disposed of

ad Count.

of the custody and tuition of the said E. F. an infant, to him the said defendant, and alledging that he the said defendant was desirous of removing the said E. F. the infant from the said P.'s school, and to place him an apprentice to some trade or profession, prosecuted and sued out, and caused to be prosecuted and sued out of the court of our lord the king, before the king himself, at Westminster aforesaid, a certain other writ of *habeas corpus*, by which said writ the said P. was commanded [recite the writ *ut supra*], and that he should have then and there the said last-mentioned writ: And the said defendant, further contriving and intending as aforesaid (*ut supra* till), from London to F. aforesaid, in the said county of Somerset, when in truth and in fact the said E. F. deceased, did not in and by his last will and testament dispose of the custody and tuition of the said E. F. the infant to the said E. F. and when in truth and in fact the said defendant well knew that the said E. F. deceased, did not by his last will and testament dispose of the custody and tuition of the said E. F. the infant of the said E. F.: And the said P. in fact says, that by means of the premises *last aforesaid* [*ut supra*]: And whereas also before the committing the grievance next hereinafter mentioned the said E. F. an infant, [as in first] as a scholar in his said school at F. aforesaid to be by him *there* educated, &c. [as in first] care, and custody of the said P. there for, &c. *unjustly and unlawfully* intending, &c. on the day and year first, &c. *unjustly and unlawfully* prosecuted and sued, &c. to a certain other writ, &c. by which said *last-mentioned writ* another sum, (the sum of sixty pounds), in and about, &c. from L. aforesaid to F. aforesaid, as last aforesaid, &c.

3d Count same as the first, altering the words *correctly*, &c. to *unjustly and unlawfully*, and leaving out *without reasonable cause*.

F. BULLER.

The instructions for the above were the false suggestions in defendant's affidavit, that E. F. deceased, did in and by his last will and testament in writing duly executed and attested as said F. believed, nominated and appointed him trustee for and on behalf of his two

children, when in fact there was no attestation to the said will, and which he must well know, as he himself took out administration with the will annexed, on the second of February 1767, by means of which false suggestion it was presumed the *habeas corpus* was granted.

* TORT TO PERSONAL PROPERTY, AND OF A MIXED NATURE, DECEIT, AND WARRANTY.

MIDDLESEX, to wit. W. W. complains of A. G. and P. W. H. being, &c.; for that whereas defendants heretofore, to wit, on, &c. at, &c. falsely and scandalously deceived the said plaintiff, by then and there selling to him said plaintiff a certain quantity of spirituous liquors called geneva as and for the quantity of two gallons, and by then and there warranting the same to be and contain in itself that quantity, when in truth and in fact the said quantity of spirituous liquor so sold and warranted as aforesaid

Deceit in selling spirituous liquors by short measure.

• With a bar.

at

at the time of the sale and warranty thereof was not, nor did the same contain in itself the said quantity of two gallons, but a much less quantity, to wit, the quantity of one gallon and seven pints and no more, as they the said defendants well knew, to wit, at Westminster aforesaid; and for that, &c.

Declaration on the case upon deceit and warranty in exchange of horses, and money paid by plaintiff.

FOR that whereas the said plaintiff, on, &c. at, &c. bargained with said defendant to exchange with said defendant a certain mare of the said plaintiff for a certain mare of said defendant, and the said defendant, then and there well knowing the said mare of him said defendant to be lame *and strained in her back, and to have a certain disease or disorder called the yellows*, and unsound, and not fit for use, by then and there falsely and fraudulently warranting the said mare of him said defendant to be sound *in all respects*, then and there falsely and fraudulently exchanged the said mare of him said defendant with him the said plaintiff, for the said mare of the said plaintiff and a large sum of money, to wit, the sum of, &c. then and there paid by plaintiff to the said defendant; which said mare of the said defendant, at the time of the said warranty and exchange thereof, was lame *and strained in her back, and had a certain disease or disorder called the yellows*, and was unsound, and not fit for use, and hath from thence hitherto so remained and continued, and still doth so remain and continue; and so the plaintiff saith, that the said defendant, on the said, &c. in the year aforesaid, at, &c. aforesaid, falsely and fraudulently deceived him said plaintiff, to wit, at, &c. aforesaid. [Add a second Count, omitting what is in Italic.] Damages, &c. Suit, &c.

Michaelmas Term, 2. Geo. III.

Declaration on deceit, in not delivering the proper measure of coals.

CITY OF EXETER, to wit. Nathaniel Saunders complains of John Beckington, being, &c.; for that whereas said plaintiff, on the twentieth day of December 1759, and on divers other days and times between that day and the twenty-second day of June 1761, at Exeter aforesaid, in the county of the same city, bargained with the defendant to buy of him said defendant divers quantitles of coals, amounting in the whole to one hundred and twenty-eight quarters of coals. each quarter whereof to contain sixteen bushels of coals Winchester measure, he the said defendant, on divers days and times in the time aforesaid, at, &c. aforesaid, for a large sum of money, to wit, the sum of ninety-seven pounds ten shillings of lawful, &c. falsely and fraudulently sold and delivered to said plaintiff divers quantities of coals, amounting in the whole to one thousand and sixty-four bushels of coals Winchester measure and no more, and for one hundred and twenty-eight quarters of coals Winchester measure, whereby said defendant then and there deceitfully and fraudulently deceived the said plaintiff of three hundred and four bushels of coals Winchester measure,

measure, to the value of seventeen pounds fifteen shillings and sevenpence halfpenny of lawful, &c. [Two Counts more for other times and quantities of coals.] Conclusion. Whereupon said plaintiff saith that he is injured, and hath sustained damage to the value of fifty pounds; and therefore he brings suit, &c. Pledges, &c.

Michaelmas Term, 14. Geo. III.

CAMBRIDGESHIRE, to wit. William Parker complains of David Todd, being, &c. of a plea of trespass on the case; for that whereas said plaintiff, on the twenty-fifth day of June 1773, to wit, at the Isle of Ely, in the said county, bargained with said defendant to exchange with said defendant a certain horse, to wit, a grey gelding of said plaintiff of a large value, of the value of seventeen pounds seventeen shillings for a certain horse, to wit, a chesnut gelding of said defendant, and to pay also to the said defendant a certain sum of money, to wit, the sum of five pounds five shillings, together with the said gelding of the said plaintiff, for the gelding of said defendant (the said gelding of said plaintiff, and the said sum of five pounds five shillings by him to be paid to the said defendant, being then and there a good and sound price and valuable consideration for a good and sound gelding) to wit, at the Isle of Ely aforesaid; and the said defendant then and there well knowing the said gelding of him the said defendant not to be able to swallow straw, hay, and grass, and to be unsound and unfit for use, by then and there falsely and fraudulently alledging and affirming that the said gelding of him the said defendant was sound, for any thing he the defendant knew to the contrary, he said defendant falsely and fraudulently exchanged the said gelding of him the said defendant with the said plaintiff for the said gelding of him said plaintiff, and also for the said sum of money, to wit, the said sum of five pounds five shillings then and there paid by the said plaintiff to the said defendant, together with the said gelding of the said plaintiff so given in exchange for the said gelding of the said defendant as aforesaid; which said gelding of said defendant, at the time of the exchange thereof, was not able to swallow straw, hay, or grass, and was unsound and unfit for use, and so from thence hitherto hath remained and continued, and still doth so remain and continue, to wit, at the Isle of Ely aforesaid, in the county aforesaid; and so the said plaintiff saith, that the said defendant, on the said twenty-fifth day of June in the year aforesaid, at the Isle of Ely aforesaid, in the county aforesaid, falsely and fraudulently deceived him the said plaintiff: And whereas said plaintiff afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, bargained with said defendant to exchange with said defendant a certain other gelding of him the said plaintiff for a certain other gelding of said defendant, and to pay to said defendant on such exchange a certain sum of money, to wit, another sum of five pounds five shillings; and the said defendant then and there.

*Declaration on
deceit in the ex-
change of one
horse for another
and money, de-
fendant know-
ing his to be un-
sound, and plain-
tiff's horse and
money being a
valuable confi-
deration for a
sound horse.*

2d Count.

there well knowing the said last-mentioned gelding of him said defendant to be damaged and unsound, to wit, by being unable to swallow straw, hay, or grass, then and there falsely and fraudulently exchanged his said last-mentioned mare with the said plaintiff as and for a sound gelding, for any thing he said defendant knew to the contrary, for his last-mentioned gelding, and the said sum of five pounds five shillings, and then and there paid by the said plaintiff to the said defendant on that occasion, the said last-mentioned gelding of the said plaintiff then and there being of a large value, to wit, of the value of seventeen pounds seventeen shillings, and the sum of five pounds five shillings, being together a good and sound price, and a good and valuable consideration for a good and sound gelding, which said last-mentioned gelding of the said defendant, at the time of the said exchange thereof, was damaged and unsound, to wit, unable to swallow straw, hay, or grass, and so from thence hitherto hath remained and continued, and still doth remain and continue, to wit, at the Isle of Ely aforesaid; and so the said plaintiff saith, that the said defendant, on the twenty-fifth day of June, in the year, &c. aforesaid, at the Isle of Ely aforesaid, in the county aforesaid, falsely and fraudulently deceived him the said plaintiff, to the said plaintiff his damage of forty pounds; and therefore he brings suit, &c. Pledges, &c.

Trinity Term, 17. Geo. III.

Declaration in
deceit, for selling
plaintiff unsound
sheep, part of
which died, and
others are sick.

MIDDLESEX, to wit. John Harrison complains of Stephen Maton; for that whereas he said plaintiff heretofore, to wit, on the day of , A. D. , to wit, at Westminster, in said county of Middlesex, bargained with the said defendant to bring divers *other* ewe sheep, to wit, eighty-nine *other* ewe sheep and one *other* ram of said defendant, and said defendant then and there well knowing *divers, to wit, sixty-nine of the* said ewe sheep to be unsound and ill with "the said" a certain disease called the rot, and to be of no value, by then and there falsely and fraudulently warranting all the said ewe sheep to be sound and free from the rot, then and there falsely and fraudulently sold the said eighty-nine ewe sheep and said ram to said plaintiff for a certain large sum of money, to wit, the sum of forty-nine pounds eight shillings, then and there paid by the said plaintiff to the said defendant for the same; which said part of the said ewe sheep, to wit, said sixty-nine of said ewe sheep at the time of the said warranty and sale thereof were, and each of them was unsound and ill with the said disease called, &c. and a part, to wit, "sixty of them" forty of said eighty-nine of said ewe sheep "fifty-nine of the other sheep" from thence hitherto have remained and continued, and still do so remain and continue, and are of little or no value, and the said residue of the said sixty-nine ewe sheep thereof, afterwards, to wit, on the first day of , A. D. , died of said disease called, &c. to wit, at, &c. aforesaid; and so the said plaintiff saith, that the said defendant, on said day of , A. D. aforesaid, at, &c.

&c. aforesaid, falsely and fraudulently deceived him said plaintiff: And whereas, &c. [the 2d Count like the first, only leaving out what is in Italic, and inserting what is between turned commas.] [The 3d Count like second, leaving out what is in Italic, and taking what is between turned commas.] [The 4th Count like the third, only saying that one half of the sheep were ill, and the other half died.] [5th Count, say, that defendant, knowing a part, to wit, twenty of the said ewe sheep, to be unsound, &c. and ill with, &c. by warranting all, &c. sold, &c. a part of which said eighty-nine ewe sheep, to wit, twenty of said ewe sheep at the time of said warranty, &c. were unsound, &c. with the said disease called, &c. the same being an infectious disease, and so for a long time, to wit, for the space of two months then next following, remained, &c. and then and there during that time last mentioned infected divers, to wit, forty others of said live sheep with said disease, and they from thence hitherto have so remained and continued and still do, &c. and all the said sheep so infected are of little value to said plaintiff, to wit, at, &c.; and so, &c. Damages, &c. Suit, &c.

YORKSHIRE, to wit. J. S. complains of W. E. being in the custody, &c.; for that whereas on the day of , in A. D. , at the castle of York, in the county aforesaid, said plaintiff bargained with said defendant to buy of him said defendant a certain parcel of wool, to wit, , which said wool was then and there packed, bound, and tied up into divers, to wit, one hundred and twenty parcels, in the form and had the appearance of wool called fleece wool; and the said defendant then and there well knowing that the said wool was deceitfully packed, bound, and tied up, and that the middle or inside of divers of the said parcels thereof was not fleece wool, nor good or merchantable wool, but was wool of a much less value than fleece wool, and not good or merchantable wool, by then and there falsely and deceitfully warranting the said wool, and every part thereof, to be fleece wool, and to be packed, bound, and tied up fairly and without deceit, and to be all good and merchantable, then and there falsely and deceitfully bargained and sold all the said wool to the said plaintiff as and for good merchantable fleece wool packed, bound, and tied up fairly, and without deceit, for a large sum of money, to wit, for six shillings and sixpence by the stone for each and every stone thereof, to be therefore paid, and afterwards there paid to the said defendant for the same: And the said plaintiff further saith, that a great part, to wit, one hundred of the said parcels thereof, was not fleece wool, nor good or merchantable wool, but was then and there wool of a much less value than fleece wool not good or merchantable wool; and so the said defendant, on the same day and year aforesaid, at the castle of York aforesaid, falsely, fraudulently, and deceitfully deceived the said plaintiff: And whereas, &c. [Another Count laid at another day subsequent for sixty stone only.]

Declaration in
deceit at the suit
of merchants a-
gainst their fac-
tor, for not de-
livering them
gum which he
had purchased
for them, but
withholding same
under false pre-
tences, and after-
wards selling
same, and con-
verting of the
extra price, &c.

ANNE SCOTT and J. Scott complain of William Ket being, &c.; for that whereas long before and at the time of the committing of the grievance hereafter next mentioned, the plaintiffs were merchants, and the business and profession of merchants did use, follow, and carry on at London, &c. aforesaid: And whereas the said plaintiffs, during all the time aforesaid, were partners and joint dealers together in their business aforesaid, to wit, at London, &c. aforesaid: And whereas before and at the time of the committing of the grievance hereafter next mentioned, and before and long afterwards the said defendant was a factor, and the business of a factor did, during all that time use and follow, to wit, at Liverpool, in the county of Lancaster; and the said plaintiffs being such merchants and partners as aforesaid, and the said defendant so being such factor as aforesaid, they said plaintiffs, whilst they were such merchants and partners as aforesaid, and whilst said defendant was and acted as a factor as aforesaid, to wit, on the day of , in the year, &c. to wit, at London, &c. aforesaid, at the request of said defendant (by one John G. by his then broker and servant of the said plaintiffs) employed and retained the said defendant in the way of his business of a factor as aforesaid, to buy for them the said plaintiffs, as such merchants, a certain quantity, to wit, fourteen tons of a certain gum called Senegal gum, otherwise gum Senegal, of a large value, to wit, of the value of one thousand and seventy pounds, part thereof then being garbled, and the other part thereof ungarbled, but which was also to be garbled by the proprietors thereof at the rate following, to wit, all such of the said gum as then was or should thereafter be garbled by the then proprietors, at the rate of five guineas for each and every one hundred weight, and so in proportion for a lesser quantity than one hundred weight, and for the second sort the black and the dust in proportion, or as it should be agreed by and between said defendant, as the factor of the said plaintiffs, and the then proprietors of the said gum, for certain commission or reward to be therefore paid and allowed by the said plaintiffs to the said defendant, to wit, by the hands of the said G. S. as the broker and servant of the said plaintiffs; and the said defendant being so retained and employed as the factor of the said plaintiffs, in manner and form and for the purpose aforesaid, afterwards, to wit, on the day and year aforesaid, at London, &c. aforesaid, accepted and took upon himself the such retainer and employ, in order to buy the aforesaid gum for the said plaintiffs, and for their sole advantage, and to act honestly in such his employ, and duly discharge his duty therein: And the aforesaid plaintiffs further say, that the said defendant did thereupon afterwards, to wit, on the day and year aforesaid, at London, &c. aforesaid, as the factor of the said plaintiffs, buy for the said plaintiffs the said gum at the rate and on the terms aforesaid, to wit, that the then proprietors thereof should garble all the ungarbled part of the said gum, and that the said plaintiffs should pay at the aforesaid rate of five guineas by the hundred weight, and so in proportion for a lesser quantity than an hundred weight for the garbled
I
ninety

ninety shillings by the hundred weight for the second best; and so in proportion, &c. seventy shillings by the hundred weight for the dust, and so, &c. and twenty shillings by the hundred weight for the black, and so, &c. : And the said plaintiffs further say, that the said proprietors of the gum did afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, garble all the said gum, and that when the same was garbled there was a large quantity, to wit, twelve tons garbled, fourteen hundred weight second best, thirteen hundred weight dust, and thirteen hundred weight black: And the said plaintiffs further say, that immediately after the buying thereof the price and value of gum did greatly rise and was very much enhanced, insomuch that by means thereof the said gum so bought as aforesaid was, before and at the time of the committing of the grievance hereafter next mentioned, worth a much larger sum of money than the same was bought for, to wit, the sum of two thousand pounds, and that said plaintiff could have sold the same for such last-mentioned sum if the said defendant would have delivered the gum to the said plaintiffs; yet the said defendant, well knowing all and singular the premises aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud said plaintiffs of the said gum, and of the profit and advantage which he could and would have made of and by the same, he the said defendant then, and after he had so purchased the said gum at the rate aforesaid for the said plaintiffs, as their factor, in manner and form aforesaid, and after all the said gum had been garbled, to wit, on the day of , A. D. , at London, &c. aforesaid, falsely and fraudulently pretended to the said plaintiffs that the whole of the said gum was not garbled, according to the pattern by him at first seen, nor according to the terms of his agreement with the original proprietors thereof, nor fit for him said defendant to receive on account of the said plaintiffs, nor merchantable, nor that he could *not* justly receive the same on their account, or not being of the value it ought to be, nor properly garbled, but unmerchantable and unfit for sale at the respective rates and prices the said plaintiffs were to pay for the same, and therefore he would not receive the same on their account, whereas in truth and in fact the said gum was properly garbled; and whereas in truth and in fact said defendant did receive the said gum so garbled on account of the said plaintiffs as his principals, and did afterwards, to wit, on the day and year last aforesaid, clandestinely, falsely, and fraudulently sell the said gum for a much larger sum of money than the price the said plaintiffs were to pay for the same, but for a much less than the real and intrinsic value of the said gum, to wit, for the sum of one thousand five hundred pounds as and for his own proper gum, and did falsely, fraudulently, and deceitfully convert to his own use the extra price for which he so sold the said gum without the knowledge, leave, licence, or consent of the said plaintiffs, or of either of them, whereby the said plaintiffs were fraudulently deprived of all the benefit and advantage which would otherwise have accrued unto the said plaintiff by the buying and

reselling of the said gum, to wit, at L. &c. aforesaid; and so the said plaintiffs say, that the said defendant, on the day and year last aforesaid, at L. &c. aforesaid, falsely and fraudulently deceived the said plaintiffs.

T R O V E R.

Declaration in trover for goods and chattels.

LONDON, to wit. J. S. complains of D. S.; for that whereas said plaintiff, on, &c. at, &c. was possessed of certain goods and chattels, to wit, &c. [set out the goods] of a large value (a), to wit, of the value of pounds, as of his own proper goods and chattels; and being so possessed thereof, he the said plaintiff afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, casually lost the same goods and chattels out of his hands and possession; which said goods and chattels afterwards, to wit, on the day and year aforesaid, at, &c. aforesaid, came into the hands and possession of said defendant, who found the same; yet said defendant, well knowing the goods and chattels to be the goods and chattels of said plaintiff, and of right to belong and appertain unto him the said plaintiff, but contriving, &c. to deceive and defraud said plaintiff in this behalf, hath not as yet delivered the said goods and chattels, or any or either of them, or any part thereof to said plaintiff, although often requested so to do, but on the contrary thereof he said defendant afterwards, to wit, on, &c. at, &c. aforesaid, converted and disposed of said goods and chattels to his own use, to the damage of the said plaintiff of pounds, for which he brings his suit, &c. [If in B. R. insert pledges, &c.]

(a) If the chattel be a dead one, you alledge it to be of the value; &c. but if it is a living one, you say of the price, &c. Cro. Jac. 130.

Declaration in trover for a bill of exchange accepted by defendant.

LONDON, to wit. T. H. complains of R. S.; for that whereas he said plaintiff, on, &c. at, &c. was possessed of and in a certain bill of exchange in writing, that is to say; a certain bill of exchange drawn by one G. S. on and accepted by him said defendant, whereby said G. S. required said defendant to pay at a certain time now past to him said G. S. or his order thirty pounds for value received, and which said bill of exchange was indorsed by said G. S. to one J. C. and by said J. C. indorsed to said plaintiff the said bill of exchange, being of a large value, to wit, of the value of thirty pounds, as of his the said plaintiff's own proper bill of exchange; and being so thereof possessed, he the said plaintiff afterwards, to wit, on, &c. at, &c. aforesaid, casually lost said bill of exchange out of his hands and possession; which said bill of exchange afterwards, to wit, on the day and year aforesaid, at, &c. aforesaid, came to the hands and possession of the said defendant

dant who found the same; yet the said defendant, well knowing the said bill of exchange to be the bill of exchange of said plaintiff, and of right to belong and appertain to said plaintiff, but contriving, &c. to deceive, &c. said plaintiff in this behalf, hath not as yet delivered said bill of exchange to said plaintiff, although often requested so to do, but on the contrary thereof he the said defendant afterwards, to wit, on, &c. at, &c. aforesaid, converted and disposed of said bill of exchange to his own use, to the said plaintiff his damage of pounds, for which he brings his suit, &c.

FOR that whereas said plaintiff, on, &c. at, &c. was possessed of a certain writing obligatory, commonly called a bond, sealed with the seal of one G. H. (a), whereby the said G. H. had bound himself to said plaintiff in the penalty of one hundred pounds, and then being in full, and of the value of one hundred pounds as of his own proper bond; and being so possessed thereof, &c. &c. [as before.] Trover for a bond.

(a) It is not necessary to set forth the date, nor is it prudent, for fear of a mistake, which would be fatal, 4. Bac. Abg. 28.

FOR that whereas said plaintiff, on, &c. at, &c. was possessed of a certain paper writing, purporting to be a draft or bill, or order in writing before then drawn and made by one G. H. on one J. H. and whereby the said G. H. requested the said J. H. to pay to said plaintiff or bearer on demand the sum of one hundred pounds for account of said G. H. and then being in full force and of the value of one hundred pounds, as of his own draft, bill, or order; and being so possessed thereof, &c. [as before.] Trover for a draft on a banker.

THAT whereas said plaintiff, on, &c. at, &c. was lawfully possessed of certain fish, to wit, five hundred brace of pike, five hundred brace of perch, five hundred brace of trout, five hundred brace of carp, and five hundred brace of tench, of a large value, to wit, of the value of twenty pounds, as of his own proper fish; and being so thereof possessed, &c. [as before.] Trover for fish.

WILTSHIRE, to wit. Richard Eyres, assignee of the estate of Richard Nicholls, a bankrupt, within the true intent and meaning of the several statutes made and now in force concerning bankrupts, some or one of them, complains of John Crouch being in the custody, &c. in a plea of trespass on the case; for that whereas Richard Nicholls, before he became a bankrupt, to wit, on the day of , A. D , at Salisbury, in the said county of Wilts, was possessed of certain cattle, poultry, goods, and chattels, Declaration in trover at the suit of assignee of a bankrupt. 1st Count, on a trover, and consideration in time of bankrupt. 2d Count, do. to do. in time of assignee.

to wit, &c. of a large price and value, to wit, of the price and value of two hundred and seventy-five pounds of lawful, &c. as of his own proper cattle, poultry, goods, and chattels; and being so possessed, &c. lost, &c. yet, &c. did not at any time *before* the said R. N. became a bankrupt as aforesaid, deliver, &c. although, &c. but on the contrary, &c. afterwards and before the said R. N. became such bankrupt as aforesaid, to wit, on, &c. at, &c. converted, &c.: And whereas said plaintiff, as such assignee as aforesaid, afterwards, to wit, on, &c. at, &c. aforesaid, was possessed, &c. [as in common declarations in trover] to the damage of said plaintiff, as such assignee as aforesaid, of pounds. Suit, &c. Pledges, &c. V. LAWES.

Declaration in
trover for a lease
at the suit of the
assignee of lessee.

MIDDLESEX, to wit. James Toines, late of, &c. yeoman and Peter James Bennett, late of, &c. gauze weaver, were attached to answer William Calverhouse in a plea of trespass on the case; and thereupon said plaintiff, by A. B. his attorney, complains; that whereas said plaintiff heretofore, to wit, on the day of , A. D. 1782, at Westminster aforesaid, in said county of Middlesex, was lawfully possessed of a certain indenture of lease, and a certain assignment thereof theretofore made to him said plaintiff by one R. Calverhouse therein mentioned, and duly indorsed on said indenture of lease, which bears date the third day of July 1781, and is of a certain messuage or dwelling-house situate in Sidney's alley, Leicester fields, in said county of Middlesex, by said indenture demised to said Richard Calverhouse, by one William Hayhurst therein mentioned, for a certain term to a term of years which is still unexpired, and of a certain other indenture of lease, theretofore made by said William Hayhurst to said Richard Calverhouse, and to him by a certain indorsement thereon made, duly assigned to said plaintiff of certain premises therein mentioned for a term of years, which is still subsisting and unexpired, as of his the said plaintiff's own proper indentures of lease and assignment thereof respectively; and being so thereof possessed, he the said plaintiff afterwards, to wit, on the day and year aforesaid, at, &c. aforesaid, casually lost the same, which were then and there of a large value, to wit, of the value of three hundred pounds out of his hands and possession; and they afterwards, to wit, on the day and year aforesaid, at, &c. aforesaid, came to the hands and possession of said defendants; yet said defendants, well knowing said indentures of lease and assignments to be the indentures and assignments of said plaintiff, and to him of right to belong and appertain, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him said plaintiff in this behalf, have not, nor hath either of them to said plaintiff delivered, &c. to said plaintiff, although often requested so to do, but on the contrary afterwards, to wit, on the twenty second day of January, A. D. 1783, at, &c. aforesaid, converted and disposed thereof to their own use; wherefore said plaintiff saith that he is injured, and hath

hath sustained damage to the value of three hundred pounds, for which he brings his suit, &c. W. LAWES.

Hilary Term, 31. Geo. III.

LONDON, to wit. Richard Smith, esquire, complains of Trover for American certificates
John Exley, gentleman, one of the *attornies* of our lord the now king, before the king himself present here in court in his own ^{against an attorney.}
proper person; for that whereas the said R. heretofore, to wit, on the thirtieth of December, A. D. 1786, at the parish of St. Mary le Bow, in the ward of Cheap, in L. aforesaid, was lawfully possessed as of his own property of divers, to wit, four instruments in writing respectively, purporting to be certificates from the register office of the treasury of the United States of America, bearing date the day and year aforesaid, and severally certifying that there was then due from the said United States to the said John the sum of five thousand dollars, bearing interest at six pounds *per cent per annum* from the first of January 1785, and also of four other certificates for stock in the public funds of the said United States, to the amount in the whole of twenty thousand dollars, besides interest thereon; which said several instruments and certificates, on the said thirtieth of December A. D. 1786 aforesaid, and from thence until the conversion thereof by the said John as hereinafter mentioned, were respectively in full force and of the value of eight thousand pounds of lawful, &c. to wit, at L. aforesaid, in the parish and ward aforesaid; and the said Richard being so thereof possessed afterwards, to wit, on the day and year last aforesaid, at L. &c. aforesaid, casually lost the said several instruments and certificates out of his custody; and the same afterwards, to wit, on the day and year last aforesaid, there came to the hands and possession of the said John by finding; yet the said John, well knowing the said instruments and certificates to be the property of the said Richard, and of right to belong and appertain to him, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Richard in this behalf, hath not (although often requested) delivered the said several instruments and certificates or any or either of them to the said Richard, but on the contrary thereof he the said John afterwards, to wit, on the twenty-third of January, A. D. 1790, at L. aforesaid, in the parish and ward aforesaid, converted and disposed of the same to his own use, to the damage of the said Richard of eight thousand pounds, and therefore he prays relief, &c. Pledges, &c. S. MARRYAT.

If this cause goes on to issue, the plaintiff must give the defendant notice to produce the certificates in question at the trial, in order to render parol evidence of them admissible. Before he proceeds in the cause, however, it will be material for him to consider whether he can establish the facts of his case in

proof, without resorting to a court of equity for a discovery; because, if for want of evidence at law, he should hereafter be obliged to file a bill, he will of course be put to his election, in which court to proceed, and must pay the costs of the proceedings in the court he abandons. S. MARRYAT.

Michaelmas Term, 30. Geo. III.

Trover against assignees of a bankrupt, to recover monies, notes, and bills, which were remitted to bankrupt to take up bankrupt's acceptances for plaintiff, which he did not do, but therewith satisfied his own creditors, then committed an act of bankruptcy, and these identical monies, &c. were seized under the commission.

LONDON, to wit. William Justin complains of John Gregory and William Ward being, &c.; for that whereas the said William Justin heretofore, to wit, on the first of August, A. D. 1789, at the parish of St. Mary-le-bow, in the ward of Cheap, in L. aforesaid, was lawfully possessed, as of his own property, of the sum of four hundred and seventy-four pounds twelve shillings in monies numbered, and of two certain promissory notes of the governors and company of the Bank of England, commonly called bank notes, for payment of the several sums of fifty pounds and ten pounds on demand to the respective bearers thereof, and also of divers bills of exchange respectively made according to the usage and custom of merchants, that is to say, a certain bill of exchange for the sum of one hundred and fifty pounds, drawn by the said William Justin upon one Richard Lloyd, payable to one William Stevens or order; a certain other bill of exchange for the sum of forty-nine pounds, drawn by certain persons trading under the firm of Smalley and Co. upon one Mr. Mart, payable to the said W. J. or order; a certain other bill, &c. &c. &c. [stating many other bills *et supra*] which said several notes and bills of exchange respectively were then and there in full force and of a large value, to wit, the value in the whole of pounds; and being so possessed thereof, the said W. J. afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, casually lost the said monies, notes, and bills of exchange out of his custody and possession; and the same afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, came to the hands and possession of the said John Gregory and William Ward by finding; yet the said John Gregory and William Ward well knowing the said monies, notes, and bills of exchange, to be the property of the said W. J. and of right to belong and appertain to him, but contriving and fraudulently intending craftily and subtilly to deceive and injure the said W. J. in this behalf, have not, nor hath either of them (although often requested) delivered the said monies, notes, and bills of exchange, or any part thereof to the said W. J. but have, and each of them hath hitherto wholly refused so to do, and on the contrary afterwards, to wit, on the day of , in the year aforesaid [the day of the demand on which the action is brought] at L. aforesaid, in the parish and ward aforesaid, converted and disposed thereof to their own use, to the damage of the said W. J. of pounds, and therefore he brings suit, &c. Pledges, &c.

S. MARRYAT.

CASE. The plaintiff, W. Justin, a cotton manufacturer in Lancashire, sold goods to one William Stevens, a mercer, of London, and was also in the habit of drawing bills for his own accommodation on Stevens, who accepted them, and was always remitted cash or bills by Justin in time to answer the acceptances. The

bill connection was distinct from the account between the parties for the goods sold, and Stevens acted therein as agent for Justin, and trustee for what he might receive from him. In July there were many bills running on Stevens, and the bills, and each for which the action is brought, were then remitted to him on answer.

answer the acceptances. Instead of applying the cash and bills in payment of Justin's draft, S. paid away a great part of the cash, and some of the bills, to satisfy his own creditors. The rest of the bills and about eighty pounds of the identical cash remitted by Justin were remaining in his hands on the thirtieth of July, when he committed an act of bankruptcy, but were seized by the messenger under the commission, and afterwards delivered to defendants, his assignees. S. paid no part of his acceptances, and Justin took up the greater part of them. At the time of his failure, S. was indebted to Justin for goods sold, &c. upwards of one thousand four hundred pounds, exclusive of the bills and money seized by the messenger. A demand in writing of the bills and money was served on defendants, the assignees, together with an offer by Justin to indemnify Stevens's estate against all acceptances upon his account, and upon their refusal to deliver up the bills and cash the above action was brought.

OPINION. Under the circumstances stated in the instructions, it is perfectly clear that the bills remitted by the plaintiff to S. and the cash likewise, if distinguishable, that remained specifically in Steven's hands at the time of his bankruptcy, belong to the plaintiff, and not to the assignees; and I see no reason why they should not be recoverable in an action of trover, as well as by a petition to the great seal. But in this case it appears to me, that there is not at present an objec-

tion to the plaintiff's obtaining the property in question, by either action or petition, unless he has taken up the whole of Stevens's acceptances on his account, which I collect from the instructions he has not yet done; for I doubt whether a person, who like the plaintiff here, has a general property of the subject now of dispute, can maintain trover against one who has a special property in it, as the bankrupt had for the purpose of discharging his own acceptances, until the special purpose is completely at an end; and even a court of chancery will not order bills remitted to a bankrupt to be delivered up before payment of those they were meant to provide for. I therefore advise the plaintiff immediately to take up such of Steven's acceptances for him as are still outstanding, and then to repeat the demand that has been made, only stating that he has actually taken up the bills, which may be shewn to the assignees, instead of offering them an indemnity against them; after which he may deliver this declaration entitled of a day, subsequent to the second demand, without issuing a new writ. If, however, the plaintiff's demand upon Stevens exceeds the amount of Stevens's outstanding acceptances, and has not been proved under the commission, I think the plaintiff is not absolutely bound to take them up as a preliminary to his action, although I would recommend it to him to do so, if he can conveniently accomplish it.

S. MARRYAT.

S.C. as reported
in 2. Vez. 581.

Foster v. Bon-
ter, Cowp. 454

1. Atk. 240.
Zincke v. Wal-
ker, 2. Bl. 114.

LANCASHIRE, to wit. Joseph Whitridge, Philip Horton, and William Hope, assignees of the estate and effects of Thomas Pearson, a bankrupt, according to the form of the several statutes made and now in force concerning bankrupts, complain of William Gregson, John Gregson, James Gregson, Thomas Parke, and Thomas Marland, being, &c.; *for that* "and" whereas the said Thomas P. before he became bankrupt, "Joseph Philip and William Hope, assignees as aforesaid heretofore," to wit, on the "said" twenty-eighth of March, in the year of Our Lord 1789 "aforesaid" at, &c. in the county palatine of Lancaster "aforesaid," was "were" lawfully possessed of the "several other" goods and chattels hereinafter next mentioned, that is to say, one thousand two hundred yards of sattin, one hundred yards of fatinett, five hundred yards of florentine, fifty yards of tabby, one hundred and fifty yards of armozeen, one hundred yards of ducap, four thousand yards of lutestring, one thousand yards of mode, two hundred yards of persian, five thousand yards of other silk, one thou-

Trover for goods
by assignee of a
bankrupt.

thousand two hundred yards of bombazeen, two thousand yards of broad cloth, three hundred yards of kerseymere, two thousand yards of other woollen cloth, one hundred yards of velvet, two hundred yards of velveret, one hundred yards of thickset, three hundred yards of corderoy, three hundred yards of linsey-wolsey, one hundred yards of everlasting, two hundred yards of princes stuff, two thousand yards of other stuff, one thousand yards of flannel, five thousand yards of linen, one hundred pieces of nankeen, fifty pieces of earning, fifty pounds weight of silk twist, fifty pounds weight of other silk, and one hundred pounds weight of thread, of a large value, to wit, the value of "other" three thousand pounds of "like" lawful money of *Great Britain* as of *his* "their" own proper goods and chattels; and being so possessed thereof, *he* "they" the said *Thomas Pearson*, "*Joseph Phillip*, and *William Hope*" afterwards, to wit, on the day and year "last" aforesaid, at, &c. aforesaid, casually lost the same out of *his* "their" hands and possession; and the said "last-mentioned" goods and chattels afterwards, to wit, on the day and year "last" aforesaid, there came to the custody and possession of the said *William G. John J. Thomas P.* and *Thomas Marland* by finding; yet the said *William G. John J. Thomas P.* and *T. M.* well knowing the said "last-mentioned" goods and chattels to be the property of the said *Thomas Pearson* before he became a bankrupt, "*Joseph Phillips* and *William Hope*," and of right to belong and appertain to the said *Joseph Phillips* and *William Hope* "to them," as assignees as aforesaid after the bankruptcy of the said *Thomas Pearson*, but contriving and fraudulently intending craftily and subtilly to deceive and injure the said *Thomas Pearson* before he became bankrupt, and the said *Joseph P.* and *William H.* since the said bankruptcy in this behalf, have not (although often requested) delivered the said "last-mentioned" goods and chattels, or any of them, either to the said *Thomas P.* before he became a bankrupt, or to the said *Joseph P.* and *William H.* since the said bankruptcy, but have wholly refused and neglected so to do, and on the contrary thereof afterwards, and after the said bankruptcy, to wit, on the "said" twenty-fourth day of *July A. D.* aforesaid, at, &c. aforesaid, converted and disposed thereof to their own use, to the damage of the said *Joseph P.* and *William H.* as aforesaid of three thousand pounds; and therefore they bring suit, &c. Pledges, &c.

Hilary Term, 30. Geo. III.

Declaration in trover in B. R. at the suit of a husband and wife administratrix during the minority of an infant; with an averment, that the infant is yet a minor under the age of twenty-one years.

LANCASHIRE, to wit. *J. S.* and *Helen* his wife, administratrix of all and singular the goods, chattels, and credits which were of *J. O.* deceased, at the time of his death, who died intestate, for the use of *L. O.* a minor, the natural and lawful child, and only next of kin of the said *J. O.* during the minority of the said *L. O.* complains of *H. K.* being, &c.; for that whereas the said *J. O.* heretofore, to wit, in his lifetime, to wit, on, &c. at, &c. in, &c. was possessed of divers goods and chattels, to wit, eight chairs, &c. of a large value, to wit, of the value of twenty pounds

pounds of lawful money of Great Britain in the whole, as of his own proper goods and chattels; and being so possessed thereof, he the said J. O. afterwards in his lifetime, to wit, on, &c. at, &c. in, &c. lost the same goods and chattels out of his hands and possession; which said goods and chattels afterwards, in the lifetime of the said J. O. to wit, on, &c. at &c. came by finding to the hands of the said defendant; yet the said defendant, well knowing the said goods and chattels to be the proper goods and chattels of the said J. O. and of right to belong to and appertain to him, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said J. O. in his lifetime, did not deliver the said goods and chattels, or any or either of them, or any part thereof to the said J. O. although often requested; but the said defendants afterwards, in the lifetime of the said J. O. to wit, on, &c. at, &c. in, &c. converted and disposed of the said goods and chattels to his own use: And whereas the said J. O. heretofore, in his lifetime, to wit, on, &c. at, &c. was possessed of divers other goods and chattels, to wit, eight, &c. of a large value, to wit, of the value of other twenty pounds of like lawful money, as of his own proper goods and chattels; and being so possessed thereof, he the said J. O. afterwards in his lifetime, to wit, on, &c. at, &c. lost the same goods and chattels out of his hands and possession; which said goods and chattels afterwards, in the lifetime of the said J. O. to wit, on, &c. at, &c. in, &c. came by finding into the hands and possession of the said defendant; yet the said defendant, well knowing the said goods and chattels to have been the proper goods and chattels of the said J. O. in his lifetime, and of right to belong and appertain to the said J. S. and H. his wife, as such administratrix as aforesaid after the death of the said J. O. but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said J. O. in his lifetime; and the said J. S. and H. his wife, as such administratrix as aforesaid after the death of the said J. O. in this behalf (*to which said Helen, the wife of the said J. S. the testatrix and curatrix, lawfully assigned of the said L. O. a minor, administration of all and singular of the goods, chattels, and credits of the said J. O. deceased, at the time of his death, for the use, and during the minority of the said L. O. by J. B. clerk, master of arts, vicar general and official principal to the right reverend father in God William, by Divine Permission, lord bishop of Chester, to whom the granting of administration in this case belonged after the death of the said J. O. to wit, on, &c. at, &c. in, &c. was duly committed*) did not deliver the said goods and chattels to the said J. O. in his lifetime, nor hath he as yet (although often requested) delivered the same to the said J. S. and H. his wife, as administratrix as aforesaid, or to either of them since the death of the said J. O. but the said defendant, after the death of the said J. O. and after the granting the said administration in form aforesaid, to wit, on, &c. at, &c. in, &c. converted and disposed of the said goods and chattels to his own use: *And the said J. S. and H. his wife avers, that the said L. O. in the said*

admini-

2d Count, for
conversion in the
time of admini-
stratrix.

Vide 1. Lord
Raym. 634.
4th Ed.
Gidley v. Wil-
liams.

administration mentioned is yet a minor under the *age of twenty-one years* (a), to wit, at, &c. in, &c. to the damage of the said J. and H. as she is such administratrix as aforesaid, of fifty pounds; and therefore they bring their suit, and they bring into court here the letters of administration of the said vicar general of the said lord bishop, which sufficiently prove the granting of the said administration to the said H. the wife of the said J. in form aforesaid, the date whereof is the day and year in that behalf above-mentioned.

T. BARROW.

(a) This averment is good, because the administration was during the minority of L. O. who was only entitled to the administration, 1. Lord Raym. 667; but if the father had made a will, and left the minor executrix, it would have been bad, for it ought then to have been *seventeen* instead of *twenty one* years

adjudged upon demurrer, Piggott v. Gascoynett, Cro. Eliz. 602. Beal v. Simpson, 1. Lord Raym 409. 4th. Ed; but there said it is cured by verdict per Treby justice, and is waived by pleading over *per tot. cur.* Vide the authorities there cited.

T. BARROW.

TORTS OF A MIXED NATURE, AND FOR NONFEASANCE—MISFEASANCE.

Declaration for not delivering up an articulated servant, &c.

(1) "Kept and detained"

2d Count.

LANCASHIRE, to wit. J. B. complains of T. R. being, &c.; for that whereas the said J. B. on, &c. at, &c. in, &c. retained in his service one W. B. to serve him the said J. B. in certain lawful affairs and businesses of him the said J. B. for the space of three years from thence next ensuing; nevertheless the said T. R. well knowing the premises, but wrongfully and injuriously contriving and maliciously intending wholly to deprive the said J. B. of the service of the said William, and of all the benefit, profit, and advantage which would have accrued to him the said James from such service of the said W. B. all the time aforesaid afterwards, to wit, on, &c. without the licence and consent, and against the will of the said J. B. *hired and took* (1) the said William, so being retained as aforesaid, into the service of him the said T. R. and kept and detained the said W. B. in the service of him the said T. R. for a long space of time, to wit, continually from that time hitherto, that is to say, at, &c.; and the said J. B. hath not, although often requested, delivered up the said William to the said J. B. but to deliver up the said W. B. to the said J. B. hath hitherto altogether refused, and still doth refuse; by reason whereof the said J. B. hath lost not only the service of the said W. B. during all the time last mentioned, but also divers great benefits, profits, and advantages which would have accrued to the said J. B. from the said W. B. during all that time, to wit, at, &c.: And whereas also the said James afterwards, to wit, on, &c. had retained in his service a certain other W. B. to serve him the said James in certain lawful affairs and businesses of him the said J. B. for the space of three years then next ensuing: And whereas also the said

said last-mentioned W. B. afterwards, to wit, on, &c. at, &c. had, without the licence or consent, and against the will of the said James, hired himself unto and entered into the service of the said Thomas; nevertheless, the said Thomas, well knowing the premises, but contriving, &c. [finish this Count same as last, omitting the words in *Italic*, and inserting in lieu thereof what is in the margin]: And whereas also the said J. afterwards, to wit, on, ^{3^d} Count. &c. had retained, &c. then next ensuing, and by reason thereof the said W. B. had then and there entered into the service of the said J. B. and had been diligently occupied and employed in the said service of the said James for a long space of time, to wit, for the space of three days, by reason whereof the said James had been put to great trouble and expence of his monies, that is to say, to the expence of three pounds, in and about the said last-mentioned W. B.; nevertheless the said T. R. well, &c. but, &c. the said James of the residue of the service of the said W. B. and of all the benefit, profit, and advantage which would have accrued therefrom to him the said James afterwards, to wit, on, &c. enticed and procured the said last-mentioned W. B. so being in the service of the said J. B. as aforesaid, to quit and withdraw himself from his said service; by reason whereof the said last-mentioned W. B. afterwards, to wit, on, &c. at, &c. without the licence and consent, and against the will of the said James, quitted and withdrew himself from his said service; and the said T. R. well knowing the premises, but contriving, &c. the said J. B. in this behalf, afterwards, on, &c. at, &c. without the licence and consent, and against the will of the said J. B. hired and took the said last-mentioned W. B. so being the servant of the said James, into the service of him the said T. R. and kept and detained the same W. B. in the service of him the said T. R. for a long space of time, to wit, continually from that time hitherto; to wit, at, &c.; and the said T. R. although often requested, hath not delivered up, &c. &c. [as before]. Damages five hundred pounds.

V. LAYES.

SUFFOLK, to wit. William Large, late of Brandon, otherwise Brandon Ferry, in the said county of Suffolk, innholder, was attached to answer unto John King, in a plea of trespass on the case; and thereupon the said John, by William Fuller, his attorney, complains *that*, “and” whereas the said John, before the committing of the several grievances in this Count mentioned, to wit, on the “said” thirtieth of July, in the year of *Our Lord* 1775 “aforesaid,” at Brandon “aforesaid, in the said county of S. was, and from thence hitherto hath been, and still is, seised in his demesne as of fee of and in a certain “other” *ancient and* public, “and accustomed” inn, “with the appurtenances,” and called or known by the name or sign of the White Hart, *with the brew-* was a public house, at an improved rent; and for maliciously withdrawing customers from his inn to another inn during the time he held over the former inn, and opening a new inn nearly opposite.

Declaration in tort, for non-seizance in holding over and for not delivering up premises at the end of the demise, whereby plaintiff lost the benefit of a contract he had made with another person for letting the premises, which

houses,

houses, stables, houses, outhouses, and other edifices and buildings, yard, garden, and orchard, and all other the appurtenances thereunto belonging; and being so seised he the said John, on the said thirtieth of July, A. D. 1775 aforesaid, at B. aforesaid, demised the said "last-mentioned" inn and other the premises aforesaid, together with the use of a chamber over a certain malt-house near adjoining to the said premises, with the appurtenances, (except "and reserved" as in the said demise thereof is excepted "mentioned") unto the said William Large, to hold the same to him the said William L. for the term of seven years from the "said" fifth day of "the said" July A. D. 1775 "aforesaid," at and under the yearly rent of thirty-one pounds ten shillings; by virtue of which said "last-mentioned" demise the said William L. after the making thereof, and before the committing of the grievances "hereafter" in this Count mentioned, entered into, and became and was possessed of the said "last-mentioned" inn, and the premises so to him demised as aforesaid, with the appurtenances, and remained and continued in possession of the same from thence until his quitting thereof, as is hereafter mentioned, to wit, at B. aforesaid: And the said John in fact further saith, that during the said term so demised to the said William L. "as last aforesaid," and long before that time the same "said last-mentioned" inn of the said John was a house of great resort, and of extensive and established custom and trade, as well in the business of inn-keeping as in that of a victualler, which during all the "that" time aforesaid was carried on and exercised therein: And the said John in fact further saith, that he the said John being so seised as aforesaid, and being desirous that the said William L. should quit and deliver up the possession of the said premises so to him demised as aforesaid, with the appurtenances, at the end and determination of the said term so to him thereof demised as aforesaid, he the said John, during the continuance of the said term, and long before the determination thereof, to wit, on the fifth of January, A. D. 1782, at B. aforesaid, gave notice to the said William L. for him the said William L. to quit; and the said John did thereby then and there require the said William L. to quit, leave, and deliver up the possession of the said inn, and other the premises so to him demised as aforesaid, with the appurtenances, unto him the said John at the end and expiration of the said term of seven years so thereof demised to him the said W. L. as aforesaid, that is to say, upon the fifth of July then next following, and each in the said year of Our Lord 1782, and thereupon the said John, in full expectation and confidence that the said William L. would quit and deliver up the possession of the said premises so to him demised as aforesaid, with the appurtenances, to him the said John at the end and expiration of the said term, and according to the tenor of such notice to quit as aforesaid, afterwards, and before the expiration of the said term, to wit, on the twentieth of June, A. D. 1782 aforesaid, at B. aforesaid, agreed with one James Cornwall to let and demise unto him the said James Cornwall, at and upon the end and expiration of the said term so demised to the said William L. as aforesaid, the said several premises so demised to the said W. L. as aforesaid, with the appur-

appurtenances, except the said chamber over the said malt-house, in lieu and instead of which, it was then and there agreed by and between the said John and the said James Cornwall, that the said James C. should have a certain chamber over one of the afore said stables belonging to the said inn, for the term of seven years from thence next ensuing, at and under the improved yearly rent of forty pounds; and that he the said James C. should have possession of the said last mentioned premises, with the appurtenances, upon the said fifth of July, A.D. 1782 afore said; in consideration whereof the said James C. then and there agreed with him the said John to take the said last-mentioned premises, with the appurtenances, of him the said John for the said last-mentioned term of seven years, at and under the said yearly rent of forty pounds; and also that the said James C. would, during all that time, take of him the said John all such malt as he the said James C. should, during the said last-mentioned term, use; of which said agreement so made between the said John and the said James C. as afore said he the said William L. afterwards, and before the expiration of the said term so to him demised as afore said, had notice, to wit, at B. afore said: And the said John in fact further saith, that although the said term so demised to the said William L. as afore said, did afterwards, to wit, on the said fifth of July, A.D. 1782 afore said, cease, end, expire, and determine, to wit, at B. afore said; and although the said John did then and there, at the end and expiration of the said term, expect the said William L. to quit, deliver up, and relinquish the possession of the said term and other the premises so to him demised as afore said, with the appurtenances, unto him the said John, according to the said notice so to him the said William L. given as afore said, as he then and there well knew, although the said William L. ought then and there to have quitted the said inn and premises, with the appurtenances, and to have yielded and delivered up the same and the possession thereof to him the said John: "And the said John in fact further saith, that before the suing forth of the original writ of him the said J. to wit, on the said fifth of July, in the year 1782 afore said, the said term so by him demised to the said W. L. as last afore said, expired, ended, and determined, and that the said William L. ought to have thereupon quitted and relinquished the said last-mentioned inn, with the appurtenances, so to him demised as afore said, to wit, at B. afore said;," yet the said William L. contriving and maliciously intending, wrongfully and unjustly, to injure the said John, and to hinder and deprive him of the benefit of the said agreement so by him made with the said James C. as afore said, did not, at the end and expiration of the said term so to him demised as "last" afore said, that is to say, upon the said fifth day of July, in the year 1782 afore said, or at any time before quit, yield, or deliver up the possession of the said "last-mentioned" inn and premises, with the appurtenances, so to him demised as afore said, and to him the said John, but on the contrary thereof then and there wholly refused so to do; and on the contrary, wrongfully, unjustly, and maliciously, and without the leave or licence, and against the "expressed" will of the said John, and with a view "and design" to de-
prive

prive him of the benefit of his *aforesaid* agreement with the *said* James C. as well as to injure the trade and business of the *said* "last-mentioned" inn, in the manner hereafter in this Count mentioned, held over and remained and continued in the possession of the *said* "last-mentioned" inn and premises, so to him the *said* William L. demised as *aforesaid*; with the appurtenances, from and after the end and expiration of the *aforesaid* demise thereof to him the *said* William L. for a long space of time, to wit, until and upon "the *said*" eighteenth of April, in the year of Our Lord 1783 "aforesaid," when he left and yielded up the same to the *said* John, to wit, at B. *aforesaid*, in the county *aforesaid*: And the *said* John in fact further saith, that the *said* William Large, so holding over the possession of the *said* "last-mentioned" inn as *aforesaid*, and contriving and intending to further injure the *said* John, and to draw off and remove the ancient and established custom, "trade, and business" of his *aforesaid* "last-mentioned" inn from the same unto himself the *said* W. L. and thereby to render the *said* "last-mentioned" inn, and the estate and interest of the *said* John of no title or value, whilst he the *said* W. L. so held over the possession of the *said* "last-mentioned" inn as *aforesaid*; to wit, on the eighteenth of March, in the year 1783 *aforesaid*, at B. *aforesaid*, did wrongfully and maliciously, and with a view and design to draw off and remove the ancient and established custom, trade, and business of the *said* "last-mentioned" inn of the *said* John, set up and opened a new, and another, and different inn in B. *aforesaid*, near to the *said* "last-mentioned" inn of the *said* John, and did, on the same day and year last *aforesaid*, and on divers other days and times between that day and his quitting the *said* "last-mentioned" inn of the *said* John as *aforesaid*, exercise, follow, and carry on in the *said* inn so by him the *said* "William L." newly opened "as last" *aforesaid*, the same and the like trades and businesses of an inn-keeper and victualler, as had been theretofore exercised and carried on in the *said* last-mentioned inn of the *said* John; and from the time of his setting up and opening such new inn as "last" *aforesaid*; until his quitting the *said* "last-mentioned" inn of the *said* John "as *aforesaid*" at B. *aforesaid*, he the *said* W. L. did wrongfully and maliciously, and with a "such" view and design to draw off and remove the established custom, trade, and business of the *said* "last-mentioned" inn of the *said* John unto the *said* inn so by him the *said* W. L. newly set up and opened as "last" *aforesaid*, entirely desist from and decline carrying on the *said* trades and businesses of an inn-keeper and victualler in the *said* "last-mentioned" inn of the *said* John; and instead of carrying on such trades and businesses in the *said* "last-mentioned" inn "of the *said* John" as usual, and as during *all* that time he ought to have done, he the *said* William L. wrongfully and maliciously, and with the *said* "such" view and design to draw and remove the ancient and established custom, trade, and business of the *said* last-mentioned inn did, during all the time last *aforesaid*, at B. *aforesaid*, cause and procure "the accustomed guests and customers at the

the said last-mentioned inn, and divers other" persons from time to time coming to the said "last-mentioned" inn of the said John, with intent to become guests and customers *as they had before been accustomed to do*, to be taken, sent, and brought from the said "last-mentioned" inn of the said John, to the said inn so newly opened by "him" the said W. L. "as last" aforesaid; and did there, in the said "last-mentioned" inn "so opened by the said William L. as aforesaid, instead of in the said last-mentioned inn of the said John, wrongfully and maliciously, and with such view and design as last aforesaid," entertain and serve such guests and customers in the way of his aforesaid trades and businesses of an inn-keeper and victualler, *instead of entertaining and serving such guests and customers in the said inn of the said John; and the better to bring about such his aforesaid design and intention to draw off and remove the ancient and established custom, trade, and business of the said inn of the said John, he the said William did, during all the time last aforesaid, and before he had entirely removed from the said inn of the said John, to wit, at B. aforesaid, wrongfully, maliciously, and falsely advertised and apprized the public by a certain false and public advertisement in a certain newspaper, called the* dated and published the day of , A. D. 178 , by a certain other false and public advertisement in a certain other newspaper, called the , dated and published on the day of , in the said year of Our Lord 178 , that he had then removed from the said inn of the said John unto the said inn so by him newly opened as aforesaid; and did then and there by such means as aforesaid wrongfully and maliciously solicit the custom of the public there in the said newly opened inn, instead of in the said inn of the said John, although he the said William was still in the possession of the said last-mentioned inn as the keeper thereof: And the said John in fact further saith, that the said William L. hath always since he left and quitted the said "last-mentioned" inn of the said John as aforesaid hitherto kept open, and still keeps open the said inn so by him newly set up and opened as "last" aforesaid; and that "by reason of the premises above-mentioned" *the ways and means aforesaid*, he the said William L. did wrongfully and unjustly draw off and remove, and hath wrongfully and unjustly drawn off and removed the ancient "old" and established custom, trade, and business of "the said last-mentioned" inn of the said John unto himself the said W. L. "to wit, at B. aforesaid;" whereby and on account of the premises aforesaid he the said John hath lost the benefit and advantage of the said agreement and contract so by him entered into with the said James C. as aforesaid, who, in consequence of the said John being unable to perform the said contract on his part, by reason of the said William L. so holding over and continuing in the said inn of the said John as aforesaid, declined and abandoned the said contract and agreement on his part, and refused to perform the same, or in any manner whatsoever to take the said inn of the said John; and he the said John saith, that by reason of the grievances respectively above-mentioned he the said John hath been unavoidably put

3d Count.

to great expence and trouble in and about the endeavouring to let and procure a tenant for his said inn, and to bring back and restore to it its ancient trade and business, but that he hath not been able so to do, but the said inn hath always, since the quitting the same by the said William L. hitherto remained and continued upon his hands untenanted, and the trade and business of the said inn is entirely lost, destroyed, and the estate and interest of him the said John in the said inn is by reason of the several premises hereinbefore-mentioned become of little or no value whatsoever to him the said John, to wit, at B. aforesaid, in the said county of S.; “whereby the said John hath not only lost the benefit and advantage that would have arisen and accrued to him from the performance of a certain contract for letting the said last-mentioned inn of the said John to one James C. who had, before the expiration of the aforesaid demise thereof, agreed to take the same upon the expiration of the said last-mentioned demise to the said William Large, at an improved rent, as well as to take and buy malt of him the said John, at the said last-mentioned inn, but hath always since the said William L. quitted the same as aforesaid been, and now is untenanted; and he the said John hath also been necessarily forced to lay out and expend divers sums of money in and about the endeavouring to let the said last-mentioned inn, and to restore and bring back to it its ancient and original custom, trade, and business, but hath been entirely unable so to do, and the said trade, custom, and business is entirely lost, and the estate and interest of the said John of and in the said last-mentioned inn is thereby, and in consequence of the several grievances, injuries, and premises in this Count mentioned, not only diminished and reduced, but in fact rendered of little or no value whatsoever to him the said John, to wit, at B. aforesaid, in the said county of S. :” And whereas the said John, before the committing the grievance hereafter mentioned, to wit, on the said thirtieth of July, A. D. 1773 aforesaid, at B. aforesaid, in the county aforesaid, was, and from thence hitherto hath been, and still is, seised in his demesne as of fee, of and in a certain other messuage or inn, situate at B. aforesaid, in the county aforesaid, and called or known by the name and sign of the White Hart, together with the brewhouses, stables, outhouses and other edifices and buildings, yard, garden, and orchard, and all other the appurtenances thereunto belonging; and being so seised he the said John, on the day and year last aforesaid, at B. aforesaid, demised the said last-mentioned messuage or inn and premises last aforesaid, with the appurtenances, (except as in the said demise thereof was and is excepted) together with the use of a chamber over a certain malt-house belonging to the said last-mentioned premises, to the said W. L. to hold the same to him the said W. L. for the term of seven years from the fifth day of the said July, A. D. 1775, at and under the yearly rent of thirty-one pounds ten shillings; by virtue of which said last-mentioned demise he the said W. L. after the making thereof, and before the committing the grievance hereafter mentioned, entered into, and became, and was possessed of the said last-

last-mentioned messuage or inn, and premises, with the appurtenances, for the said term so to him thereof demised as last aforesaid, to wit, at B. aforesaid: And the said John in fact further says, that he the said John, being so seised as last aforesaid, and conceiving that the said W. L. would quit and deliver up the possession of the said last-mentioned messuage or inn, and premises, with the appurtenances, to him the said John, at the end and expiration of the said last-mentioned term, to wit, on the fourth of June, A.D. 1782 aforesaid, at B. aforesaid, entered into a certain agreement with one James Cornwall for letting and demising unto him the said James C. upon the end and expiration of the said term so demised to the said W. L. as last aforesaid, the said premises so demised to the said W. L. as last aforesaid, with the appurtenances, except the said chamber over the said malt-house, in lieu and in the stead of which said chamber it was then and there agreed, by and between the said John and the said James C. that the said James C. should have a certain chamber over one of the said stables belonging to the said last-mentioned inn, at and under the improved yearly rent of forty pounds; of which said agreement, so made between the said John and the said James C. as last aforesaid, he the said W. L. afterwards, and before the expiration of the said term so to him demised as last aforesaid, had notice, to wit, at B. aforesaid: And the said John in fact further saith, that although the said term so demised to the said W. L. as last aforesaid, did afterwards, to wit, on the said fifth of July, A. D. 1782 aforesaid, cease, and expire, and determine, to wit, at B. aforesaid; and although he the said John did demand possession of the said last-mentioned messuage or inn, and premises, so demised to the said W. L. as aforesaid, with the appurtenances, and require the said W. L. to quit, yield, and deliver up the same unto him the said John, at the end and expiration of the said term so thereof demised to the said W. L. as last aforesaid, to wit, at B. aforesaid; and although the said W. L. ought then and there to have quitted the said last-mentioned messuage or inn, and premises, with the appurtenances, and to have yielded and delivered up the same, and the possession thereof, unto him the said John; yet the said W. L. contriving and maliciously intending, wrongfully and unjustly to injure the said John, and to hinder and deprive him of the said agreement so by him made with the said James C. as last aforesaid, which was still continuing and in force between them, did not, at the end and expiration of the said term so to him demised as last aforesaid, that is to say, upon the said fifth of July, A.D. 1782 aforesaid, or at any time before, quit, yield, and deliver up the possession of the said last-mentioned messuage or inn, and premises, with the appurtenances, to him the said John, but on the contrary thereof, then and there wholly refused so to do, and wrongfully, unjustly, and maliciously, and without the leave or licence, and against the will of the said John, and with a view to deprive him of the benefit of his said last-mentioned agreement with the said James C. held over, and remained, and continued in the pos-

session of the said last-mentioned messuage or inn, and premises with the appurtenances, from and after the end and expiration of the aforeaid demise thereof to him the said W. L. for a long space of time, to wit, until and upon the eighteenth of April, in the said year of Our Lord 1783, to wit, at B. aforeaid; whereby and by reason of which said premises the said John hath lost the benefit and advantage of the said last-mentioned agreement and contract so by him entered into with the said James C. as aforeaid, who, in consequence of the said John being unable to perform the said contract on his part, by reason of the said W. L. so holding over and continuing in the said last-mentioned messuage or inn of him the said John, and the said last-mentioned messuage or inn hath in consequence thereof, and by reason and means of the premises in this Count mentioned, always, from the quitting thereof by the said W. L. hitherto been, and still is, untenanted, and so is likely to remain and continue, to wit, at B. aforeaid, in the said county of S.; wherefore he the said John saith that he is injured, and hath sustained damage to the amount of one thousand pounds; for which he brings his suit, &c.

T. DAVENPORT.

Plea of judgment recovered in ejectment, and in an action for mesne profits.

First, Not guilty, and issue thereon. Secondly, As to all the premises in the said first Count of the said declaration mentioned, *actio non*; because he says, that heretofore, to wit, in Hilary term, in the twenty-third year of the reign of our lord the now king, the said John caused him the said William to be impleaded by the name and addition of William Large, late of Ipswich, in the said county of S. yeoman, at the suit of one Ralph Den, the nominal plaintiff in the said plea, in the court of our lord the now king, before the king himself, the said court then and still being at Westminster, in the county of Middlesex, in a certain plea wherefore with force and arms he the said William entered into one messuage, one brew-house, two granaries, six stables, two curtilages, one garden, one orchard, and one acre of land, with the appurtenances, situate, lying, and being in Brandon, otherwise Brandon Ferry, in the county aforeaid, which John King, gentleman, demised to the said Ralph for a term of years, which was not then expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said Ralph, and against the peace of our sovereign lord the king; and whereupon the said Ralph, by William Mott, his attorney, complained, that whereas the said John King, on the ninth of July, in the twenty-second year of the reign of our said lord the king, at B. otherwise B. Ferry aforeaid, in the county aforeaid, had demised to the said Ralph the tenements aforeaid, with the appurtenances, to have and to hold the said tenements, with the appurtenances unto the said R. and his assigns, from the eighth day of the same July, to the full end and term of seven years then next following, and fully to be complete and ended; by virtue of which said demise the said R. entered into the said tenements, with the appurtenances, and was

was possessed thereof, and the said R. being so possessed thereof, the said W. afterwards, that is to say, on the said ninth day of July, in the said twenty-second year of the reign of his said majesty, with force and arms, that is to say, with swords, staves, and knives, entered into the said tenements, with the appurtenances, which the said John King demised to the said R. in manner aforesaid, for the term aforesaid, which was not then expired, and ejected the said R. out of his said farm, and other wrongs to him did, to the great damage of the said R. and against the peace of our said sovereign lord the king; whereupon the said R. said he was injured, and had sustained damage to the value of one hundred pounds; and thereupon he brought suit, &c. : And the said William L. further says, that such proceedings were thereupon had in that plea of the same court of our said lord the king, before the king himself, at Westminster aforesaid, that afterwards, to wit, in Easter term, in the same twenty-third year of the reign of our said lord the king, the said R. by the judgment and consideration of the said court, did recover against the said W. L. his term aforesaid of and in the said tenements, with the appurtenances, together with twenty-seven pounds ten shillings, by the said court adjudged to him, as well for his damages which he had sustained by occasion of the said trespass and ejectment, as for his costs and charges by him laid out about his suit in that behalf, whereof he the said W. L. was convicted, as by the record and proceedings thereof now remaining in the said court of our said lord the king, before the king himself, at Westminster aforesaid, more fully appears, which said judgment still remains in full force, not reversed, annulled, or made void : And the said William L. further says, that afterwards, to wit, in the same Easter term last-mentioned, to wit, on Monday next after one month of the day of Easter in that term, the said John caused the said William to be impleaded by bill, without his majesty's writ, at the suit of the said R. Den, the nominal plaintiff aforesaid, in the said court of our said lord the king, before the king himself, at Westminster aforesaid, in a certain plea of trespass for the recovery of his damages by him sustained by reason of the said several premises in the said first Count of the said declaration of him the said John now exhibited, mentioned, and then and there declared against him therein; for that he the said William, on the ninth of July, A. D. 1782, at B. otherwise B. Ferry, in the said county of S. with force and arms, entered into one messuage, one brew-house, two granaries, six stables, two curtilages, one garden, one orchard, and one acre of land, with the appurtenances, of the said R. situate, lying, and being in B. otherwise B. Ferry aforesaid, in the said county of S. and ejected, expelled, put out, and removed the said R. from the possession and occupation thereof, and him the said R. so ejected, expelled, put out, removed, and kept out from the possession and occupation thereof, for a long space of time, to wit, from the said ninth of July, in the said year of Our Lord 1782, until the sixteenth of May, A. D. 1783, and during all that time had and received all the rents, issues, and profits

fits of the said tenements to his own use, whereby the said R. Den lost the benefit and advantage of the tenements aforesaid, during all that time, and was obliged to lay out and expend, and did lay out and expend, a large sum of money, to wit, the sum of fifty pounds, in order to recover the possession of the tenements, and then and there did other injuries to the said R. D. to the great damage of the said R. D. and against the peace of our lord the present king, whereupon the said R. said he was injured, and had sustained damage to the value of five hundred pounds; and therefore he brought suit, &c.; and he the said William L. by E. Estcourt, his attorney, defends the force and injury, when, &c. and said he was not guilty of the trespass above laid to his charge, in manner and form as the said R. had above complained thereof against him, and of this he puts himself upon the country; and the said R. did the like; which said issue afterwards, to wit, on the fourteenth of August, A. D. 1783, at Bury St. Edmunds, in the said county of S. before sir William H. Ashhurst, knight, and sir Beaumont Hotham, knight, justices of our said lord the king, appointed to hold the assizes in and for the county of Suffolk, according to the form of the statute in that case made and provided, came on to be tried by a certain jury of the said county of S. in that behalf duly tried, chosen, and sworn, between the said R. D. and the said W. L.; and thereupon the jurors of that jury upon their oath said, that the said W. L. was guilty of the said trespass above laid to his charge, in manner and form as the said R. had above complained against him; and they assessed the damages of the said R. by him sustained on occasion of the committing of that trespass, besides his costs and charges by him about his suit in that behalf expended, to sixty-seven pounds ten shillings; and for those costs and charges to forty shillings, as by the record and proceedings thereof remaining in the said court of our said lord the king, before the king himself, at Westminster aforesaid in full force, more fully appears: And the said William L. further says, that afterwards, to wit, on the thirtieth of November, A. D. 1783, he the said William paid to the said John the said several sums of sixty-seven pounds ten shillings, and forty shillings, so assessed by the said jury as last aforesaid; and also the further sum of thirty-seven pounds ten shillings, which by the said court of our said lord the king, before the king himself, at Westminster aforesaid, was adjudged to the said R. by his assent for increase of his costs and charges by him about his suit in that behalf expended, to wit, at B. aforesaid, in the said county of S.: And the said William in fact says, that he the said William and the said William L. whom the said John caused to be impleaded in the name of the said R. Den aforesaid, are one and the same person, and not other or different; and that the said John King, the lessor of the said R. and the said John King, the now plaintiff, are one and the same person, and not other or different; and that the said messuage, brew-house, granaries, stables, curtilages, gardens, orchard, and lands in the said several declarations of the said R. Den mentioned; and the said inn and other tenements in the said first

Court

Count of the said declaration of the said John mentioned, are the same premises, and not other or different; and that the said keeping and continuing the said R. ejected, expelled, and removed from the possession of the tenements in the said declaration of the said R. mentioned, and during that time taking the rents, issues, and profits thereof, to his the said William's own use, and the said damage therein alledged to have been sustained by the said R. thereby, and the said holding over, remaining, and continuing in possession of the said inn, and the said premises in the said declaration of the said John mentioned, and the damages therein alledged to have been sustained by the said John thereby, are the same causes of complaint, and not other or different, to wit, at B. aforesaid, in the said county of S.; and this the said William is ready to verify; wherefore he prays judgment if the said John ought to have or maintain his said action thereof against him, &c. [There were similar pleas to the second and third Counts of the declaration].

THOMAS WALKER.

And as to the said plea of the said William L. by him lastly above pleaded in bar as to all the premises in the said first Count of the said declaration in this cause mentioned, he the said John K. says, that notwithstanding any thing in that plea alledged he ought not to be precluded from having or maintaining his aforesaid action in respect of such premises against the said William L.; because protesting that the same plea and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to preclude him the said John K. from having and maintaining his said action in respect of the premises in the said first Count of the declaration in this cause mentioned against the said William L.; for replication in this behalf he the said John K. says, that though true it is that such judgments as are mentioned in the said plea of the said William L. by him lastly above pleaded in bar to the said first Count of the declaration in this action or suit were so recovered and obtained by him the said John K. in the name of R. Den, as nominal plaintiff in those actions or suits, as in the said last-mentioned plea of the said William L. is alledged; yet he the said John K. in fact further says, that the said keeping and continuing the said R. ejected, expelled, and removed from the possession of the tenements in the said declaration of the said Ralph mentioned, and during that time taking the rents, issues, and profits thereof to his the said William's own use, and the said damages therein alledged to have been sustained by the said R. thereby, and the said holding over, and remaining, and continuing in the possession of the said inn and the said premises in the said first Count of the said declaration of the said John mentioned, and the damages therein alledged to have been sustained by the said John thereby, are not the same causes of complaint, action, or suit, as the said William L. hath above in that plea alledged, but are other and different causes of action, to wit, at B. aforesaid, in the said county of S.; and this

Replication,
that the causes
of action are
different.

he the said John King prays may be enquired of by the country ; and the said William L. doth the like. [The other special pleas were replied to in the same manner.]

THOMAS DAVENPORT.

Easter Term, 29. Geo. III.

Declaration in
tort for not re-
delivering a gel-
ding which de-
fendant had
taken damage
feasant after
tender of a-
mends.

2d Count in
trover.

KENT, to wit. John Penkurst complains of William Com-
fort, being, &c. ; for that whereas the said William, before the
committing of the grievance hereafter next mentioned, to wit, on
the seventh day of April, in the year of Our Lord 1789, at the
parish of , in the county of Kent, in a certain close there then
in the possession of the said William, took and distrained a certain
gelding of the said John of a large price, to wit, of the price of
forty pounds, as doing damage there to him the said William, and
then and there impounded the said gelding as a distress for such
damages in a certain barn of the said William, situate and being
at the parish aforesaid, in the county aforesaid ; and whereas after-
wards, and whilst the said gelding was so impounded in the said barn
as aforesaid, to wit, on the seventeenth of April, in the year afore-
said, at, &c. aforesaid, the said John tendered and offered to pay to
the said W. a certain sum of money, to wit, the sum of three shillings
of lawful, &c. as and for a satisfaction and amends for the damage so
done by the said gelding in the said close (the same being then and
there a sufficient and reasonable satisfaction and amends for such
damage), and then and there requested the said William to accept
the said sum of three shillings as and for such satisfaction and amends
as aforesaid, and thereupon to deliver the said gelding to him the
said John ; yet the said William, well knowing all and singular the
premises, but not regarding his duty in this behalf, and contriving,
and wrongfully, and unjustly intending to injure the said John,
and to deprive him of the use and benefit of the said gelding, did
not, nor would, at the said time when he was so requested as
aforesaid, or at any time afterwards, accept the said sum of three
shillings of and from the said John as and for such satisfaction and
amends as aforesaid, or deliver the said gelding to him the said
John, but wholly refused and neglected so to do, and on the con-
trary thereof he the said William hath from thence hitherto wrong-
fully and unjustly kept and detained, and still keeps and detains
the said gelding, whereby the said John hath lost and been deprived
of the use and benefit of the said gelding, to wit, at, &c. afore-
said : And whereas the said John, on the said seventh of April,
A. D. 1789 aforesaid, at, &c. aforesaid, was lawfully possessed of
a certain other gelding of a large price, to wit, of the price of
forty pounds of lawful money of Great Britain, as of his own
proper gelding ; and being so thereof possessed, he the said John
afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, casu-
ally lost the said last-mentioned gelding out of his custody and
possession, which said last-mentioned gelding afterwards, to wit,
on, &c. last aforesaid, then came to the custody and possession of the
the

the said William, who then and there found the same; yet the said William, well knowing the said last-mentioned gelding to be the proper gelding of the said John, and of right to belong and appertain to him the said John, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said John in this behalf, hath not as yet delivered the said last-mentioned gelding to the said John, although often requested so to do, but he to do this hath hitherto wholly refused, and on the contrary thereof afterwards, to wit, on the thirteenth of April, in the ninth year aforesaid, at, &c. aforesaid, converted and disposed of the said last-mentioned gelding to his own use; to the damage of the said John of forty pounds; and therefore he brings suit, &c. Pledges, &c.
Drawn by Mr. TIDD.

This cause was tried before lord Loughborough, and a verdict found for the plaintiff on the first Count.

LONDON, to wit. Michael Bentley, esquire, complains Tort for nonfe-
of William Shepherd, being, &c.; for that whereas the said M. sance in not
heretofore, to wit, on the tenth of October A. D. 1788, at L. cleaning and re-
aforesaid, in the parish of Saint Mary-le-bow, in the ward of delivering a gun,
Cheap, was lawfully possessed of a certain gun of a large value, to with a count in
wit, the value of ten pounds, of lawful, &c. and being so thereof trover.
possessed, he the said M. afterwards, to wit, on the day and year
aforesaid, at L. aforesaid, in the parish and ward aforesaid, at the
special instance and request of the said William delivered the said
gun to the said William to be by him cleaned and afterwards re-
turned to the said M. within a reasonable time for that purpose; and
although the said William then and there had and received the said
gun of and from the said M. for the purpose aforesaid, yet the said
William, contriving and wrongfully intending to deceive and
injure the said M. in this behalf, did not clean the said gun and
return the same to the said M. within a reasonable time for that
purpose, but on the contrary kept and detained the same from the
said M. for a long and unreasonable space of time, to wit, from
the time of the said delivery thereof hitherto and during all that
time wholly refused and neglected to return the same to the said
M. whereby the said M. hath lost and been deprived as well of
his said gun as of the use and benefit thereof, to wit, at L. afore-
said, in the parish and ward aforesaid: And whereas the said M. 2d Count.
afterwards, to wit, on the day and year aforesaid, at, &c. afore-
said, was lawfully possessed of a certain other gun of a large value,
to wit, the value of ten pounds, of like, &c. as of his own pro-
perty; and being so possessed thereof, the said M. afterwards, to
wit, on the day and year aforesaid, at L. &c. aforesaid, casually
lost the same out of his hands and possession; and the said last-
mentioned gun afterwards, to wit, on the day and year aforesaid,
at, &c. aforesaid, came to the hands and possession of the said W.
by finding; yet the said William, well knowing the said last-men-
tioned

tioned gun to be the property of the said M. and of right to belong and appertain to him, but contriving and wrongfully intending to deceive and injure the said M. in this behalf, hath not (although often requested, &c.) delivered the said last-mentioned gun to the said M. but on the contrary afterwards, to wit, on the *twelfth of May*, in the year aforesaid, at L. &c. aforesaid, converted and disposed thereof to his own use; to the damage of the said M. of twenty pounds; and therefore he brings suit, &c. Pledges, &c.

S. MARRYAT,

By the owner of a sloop in the Thames against the owners of another, for dropping their anchor without a buoy, whereby plaintiffs sloop fell on the anchor, and was bulged, &c.

LONDON, to wit. John Edwick complains of John Logan, William Pollard, and James Cooper, being, &c.; for that whereas the said John E. on the seventeenth of December 1787, a L. aforesaid, in the parish of Saint Mary-le-bow, in the ward of Cheap, was and yet is owner of a certain sloop or vessel called the Neptune of M. which said sloop or vessel was then and there in the river Thames, to wit, in the parish and ward aforesaid, the said river then being a public king's highway and navigable river, and was then and there moored near to a certain wharf called H. wharf, having on board a certain cargo with which she was then and there laden, the same being a proper and convenient place for that purpose: And whereas the said J. E. W. and James, on the same day and year aforesaid, were and yet are the owners of a certain sloop or vessel called the S. then and there being in the river aforesaid, near to the said place where the said sloop or vessel of him the said J. E. which was so moored as aforesaid; yet the said J. C. William, and James, well knowing the premises, but wrongfully and unjustly contriving to hurt, injure, and prejudice the said J. E. in this behalf, then and there threw and dropt into the said river T. a certain anchor out of the said sloop or vessel called the S. and then fixed to the said sloop or vessel last-mentioned with a certain rope or line, and continued the said anchor so thrown and dropt into the said river as aforesaid for a long time, to wit, for the space of forty-eight hours then next following, and did not affix a buoy to the said anchor to shew where the said anchor was put; by reason whereof the said ship or vessel of the said J. E. called the N. of M. afterwards, to wit, on the same day and year aforesaid, to wit, at L. aforesaid, in the parish and ward aforesaid, in the ebbing of the tide of the said river, for want of fixing a buoy to the said anchor so thrown and dropt into the said river T. as aforesaid, fell and dropt upon the said anchor of the said J. C. William and James, whereby the said sloop or vessel of the said J. E. falling and dropping upon the said anchor of the said J. C. William and James, by and through the mere neglect and default of the said J. C. William and James, in not fixing a buoy to the said anchor, was much pierced, bulged, and broken, and then and there sunk and became filled with water, and a certain cargo of great value of the said J. E. to wit, of the value of one thousand pounds, then on board the said sloop or vessel

vessel of the said J. E. called the N. of M. was thereby greatly damaged and spoiled, and the said J. E. was necessarily obliged to lay out and expend, and necessarily did lay out and expend a large sum of money, to wit, the sum of two hundred pounds, in and about the raising, repairing, and amending the said sloop or vessel, and in raising and unloading the said cargo, and lost the use and benefit of his said sloop or vessel for a long time, to wit, for the space of three weeks, and the said sloop or vessel was thereby greatly lessened in value, to wit, at L. aforesaid, in the parish and ward aforesaid: And for that whereas by the custom of E. from 2d Count, stating a custom that owners of ships residing at anchor in navigable rivers should fix buoys to their anchors.

time immemorial used and approved of, all owners of ships riding at anchor within any navigable river of E. for all the time aforesaid used and were accustomed, and of right ought to fix a buoy to the anchors holding their ships, whereby other ships being in that river might by such buoy avoid such anchor, so that they might not be damaged thereby: And whereas the said J. E. on the same day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, was and yet is owner of a certain other sloop or vessel, called the N. of M. which said sloop or vessel last-mentioned was then in the river Thames, to wit, in the parish and ward aforesaid, the said river then being a public king's highway and navigable river, and was then and there moored near to a certain wharf called H. wharf, having on board a certain cargo with which she was then and there loaded, the same being a proper and common place for that purpose: And whereas the said J. C. W. and James, on the same day and year aforesaid, were and yet are owners of a certain other sloop or vessel called the S. then also being in the river aforesaid, near to the said place where the said sloop or vessel of the said J. E. was so moored as last aforesaid; yet the said J. C. W. and James, well knowing the premises, but wrongfully and injuriously contriving and intending to hurt, injure, and prejudice the said J. E. in this behalf, then and there threw and dropt into the said river Thames a certain anchor out of the said sloop or vessel called the S. and then fixed to the said sloop or vessel last-mentioned with a certain rope or line, and continued the said anchor so thrown and dropt into the said river as aforesaid for a long time, to wit, for the space of forty-eight hours then next following, and did not affix a buoy to the said anchor to shew where the said anchor was put; by reason whereof the said last-mentioned sloop or vessel of the said J. E. called the N. of M. afterwards, to wit, on the same day and year aforesaid, in the ebbing of the tide of the said river, for want of fixing a buoy to the said last-mentioned anchor so thrown and dropt into the said river as last aforesaid, fell and dropt upon the said anchor of the said J. C. William and James, whereby the said sloop or vessel of the said J. E. falling and dropping upon the said anchor of the said J. C. W. and James, by and through the mere neglect and default of the said J. C. W. and James in not fixing a buoy to the said anchor, was much pierced, bulged, and broken, and then and there sunk and became filled with water, and a certain cargo of

of the said J. E. of great value, to wit, of the value of one thousand pounds, then on board the said sloop or vessel of the said J. E. called the N. of M. was thereby greatly damaged and spoiled, and the said J. E. was necessarily obliged to lay out and expend, and necessarily did lay out and expend a large sum of money, to wit, the sum of two hundred pounds, in and about the raising, repairing, and amending the said last-mentioned sloop or vessel, called the N. of M. and in the raising and unloading the said cargo, and lost the use and benefit of his said sloop or vessel for a long time, to wit, for the space of three weeks; and the said sloop or vessel was thereby greatly lessened in value, to wit, at L. aforesaid, in the parish and ward aforesaid; wherefore the said J. E. saith he is injured, and hath sustained damages to the value of one thousand pounds; and therefore he brings suit, &c. G. Wood.

Easter Term, 21. Geo. III.

Declaration for running against plaintiff's cart and turning it over, throwing out of it a box of starch which was in it; *per quod*, the box was broke, and the starch spoiled.

JOHN ROBERTS } MIDDLESEX, to wit. For that whereas
 against } the said plaintiff heretofore, to wit, on, &c.
 JACOB TURNER. } at, &c. was lawfully possessed of divers goods and chattels, to wit, one wooden box or chest, and divers, to wit, five hundred pounds weight of starch therein contained of a large value, to wit, of the value of one hundred pounds, which said goods and chattels were then and there lying in a certain cart there then standing and being, to wit, at, &c.; and the defendant was also possessed of a certain waggon, and of certain cattle drawing the same, and then and there by a certain then servant of him the said defendant had the care, government, and direction of the said waggon and cattle, to wit, at, &c.; yet the said defendant, then and there by his said servant so negligently and unskillfully managed and behaved himself in this behalf, and so badly, ignorantly, carelessly, and negligently drove, managed, guided, and governed his said waggon and cattle, that the said waggon of him the said defendant, for want of good and sufficient care and management thereof, and of the said cattle so then and there drawing the same as aforesaid, then and there struck and run against the said cart in which the said goods and chattels of the said plaintiff were as aforesaid with such force and violence, that the said cart was thereby then and there overset and turned over, and the said goods and chattels of the said plaintiff were thereby then and there thrown out of the said cart into the street there, to wit, at, &c.; by means whereof the said box or chest of the said plaintiff containing the said starch as aforesaid was then and there split, fractured, and damaged, broke to pieces, and spoiled, and the said starch of the said plaintiff so therein contained as aforesaid was then and there split and thrown out of the same into the street there, whereby a great part, to wit, one hundred pounds weight of the said starch of a large value, to wit, of the value of twenty pounds, was then and there entirely damaged and spoiled, to wit, at, &c.: And whereas, &c. &c. [like the first, omitting what is in

2d Count.

in Italic to this mark +, then say] and was thereby then and there greatly wetted, dirtied, damaged, lessened in value, and spoiled, to wit, at, &c.

V. LAWES.

Michaelmas Term, 29. Geo. III.

MIDDLESEX, to wit. Nathaniel Fenn, late of, &c. and J. Fenn, late of, &c. were attached to answer Robert Tubbs of a plea of trespass on the case, &c.; and whereupon the said Robert, by H. B. his attorney, complains; for that whereas the said N. and J. on, &c. at, &c. were possessed of a certain chaise and a certain horse harnessed thereto, and were then and there driving the said chaise and horse in and along a certain public king's highway, to wit, at W. aforesaid, in the said county: And whereas the said Robert, on, &c. at, &c. in, &c. was possessed of a certain gelding of great value, to wit, of the value of eighty pounds, of lawful money of Great Britain, which said gelding was then and there led, passing, and going in and along the said highway; yet the said N. and J. well knowing the premises, but contriving and wrongfully and injuriously intending to injure the said Robert, on, &c. at, &c. so negligently, carelessly, and unskilfully guided, directed, and managed the said chaise and horse drawing the same, that by and through the carelessness, neglect, and unskilfulness of the said N. and J. in that behalf, the said chaise was then and there driven against the said gelding of the said Robert, *and the shaft or pole of the said chaise with great force and violence was forced and driven at and against, and into the said gelding of the said Robert*; whereby the said gelding of the said Robert was so much wounded and hurt, that the said gelding of the said Robert afterwards, to wit, on, &c. died, to wit, at, &c. whereby the said Robert not only lost and was deprived of his said gelding, but was forced and obliged to lay out and expend, and did actually lay out and expend a large sum of money, to wit, the sum of twenty pounds, in and about the endeavouring to heal and cure the said gelding of the said Robert of the aforesaid wounds and hurts, to wit, at, &c.: And whereas, &c. &c. [the second count like the first, only omitting what is in Italic.]

Declaration against defendant for driving a chaise against the horse of plaintiff, whereby plaintiff's horse was killed.

G. WOOD.

Trinity Term, 28. Geo. III.

WORCESTERSHIRE, to wit. Mary Brown complains of Joseph Whitehouse, gentleman, one of the attornies of the court of our lord the king, before the king himself present here in court in his own person, in a plea of trespass on the case; for that whereas one A. B. deceased, before and at the time of his retaining and employing the said defendant as hereafter mentioned, and also at and during the neglect and grievance hereafter mentioned, and until and at the time of the death of the said A. B. as hereafter mentioned, was seised in his demesne as of fee of and to give plaintiff his estates, &c. whereby plaintiff lost them, &c.

Declaration in negligence against an attorney for not getting one A. B.'s will prepared in time for him to execute it before his death, and by which A. B. intended

in

in a certain farm, consisting of a messuage or dwelling house, yard, barn, stables, and other outhouses, and divers, to wit, fifty acres of land and hop ground, with the appurtenances, situate and being in the parish of, &c. of a large value, to wit, of the value of one thousand pounds of lawful, &c.: And whereas the said defendant, before and at the time of the committing of the grievance hereafter mentioned, and also at the time of his being retained and employed as hereafter mentioned, was an attorney at law, and the business or profession of an attorney at law then and there exercised, followed, and carried on; and being such an attorney at law as aforesaid, and the said A. B. being so seised as aforesaid, and being also dangerously ill and indisposed, but of sound mind and memory, and desirous of making his last will and testament, and of thereby devising and bequeathing the aforesaid farm and premises with the appurtenances, and his aforesaid estate and interest therein, to the said plaintiff, he the said A. B. heretofore, and whilst he was so seised as aforesaid, and also ill and indisposed, to wit, on, &c. at, &c. retained and employed the said defendant in his said business or profession of an attorney at law for reasonable reward to him on that occasion forthwith and without delay to draw up, prepare, and attend him the said A. B. with for execution thereof as his last will and testament, the necessary writing for the purpose of his thereby devising and bequeathing the aforesaid farm and premises and his said estate and interest therein to the said plaintiff as aforesaid, and then and there gave to him the said defendant full and sufficient instructions for preparing such writing, and the said intended devise therein; and although the said defendant then and there took and received such instructions for the purpose of drawing up and preparing, and then and there undertook to draw up, prepare, and attend the said A. B. with such writing as aforesaid according to his aforesaid retainer in that behalf, and although it was then and there the duty of the said defendant to have accordingly drawn up, prepared, and attended with such writing, and although the said A. B. lived for a long time after the said defendant was so retained and instructed as aforesaid, and for a much more than a reasonable and necessary time for the drawing up, preparing, and attending the said A. B. with such writing as aforesaid, to wit, for the space of three days, and although the said A. B. was during all that time and until and at the time of his death competent, able, and willing to make such will and devise as aforesaid in favour of the said plaintiff, and would have accordingly made the same, and thereby devised the said farm and premises and his aforesaid estate and interest therein to her the said plaintiff if the said defendant had prepared and attended him with such writing as aforesaid, and although he the said defendant was frequently after he was so retained and instructed as aforesaid informed of the said A. B. continuing so ill and indisposed as aforesaid, and being likely shortly to die, and although he the said defendant was thereupon earnestly besought and entreated as well by and on behalf of the said plaintiff as such intended and expected devisee

devisee as aforesaid as by and on behalf of the said A. B. to draw up, prepare, and attend the said A. B. with such writing as aforesaid for his execution thereof as the last will and testament of him the said A. B. and although he the said defendant might and would after he was so retained and employed as aforesaid, and long before the said A. B. died, have drawn up the said intended will and testament of the said A. B. so that the same could, might, and would have been properly and legally executed by him the said A. B. as and for his last will and testament, and the said intended devise to her the said plaintiff have been thereby made, and although the said defendant frequently after he was so retained and employed as aforesaid, and before the death of the said A. B. promised to attend him with such writing as aforesaid for his execution thereof, and thereby induced the said A. B. to postpone, delay, and omit to make his last will and testament, or to send for or employ any other person than the said defendant to prepare the same or the necessary writing for that purpose, whereof the said defendant had notice, to wit, at, &c.; yet the said defendant, well knowing the premises, but neglecting his duty as such attorney as aforesaid, contriving and wrongfully intending to injure and damnify the said plaintiff, and to frustrate and defeat the said intention of the said A. B. in that behalf, did not forthwith and without delay after he was so retained and employed for that purpose as aforesaid, nor within a reasonable or any other time after such retainer and employment of him the said defendant as aforesaid, in the lifetime of the said A. B. draw up, prepare, and attend the said A. B. with such writing as aforesaid for his execution thereof as and for his last will and testament, but on the contrary thereof wrongfully and unjustly, and without any sufficient reason or excuse in that behalf, delayed, and wholly neglected, and omitted so to do, and behaved and conducted himself with such negligence, carelessness, and inattention in the premises, that the said A. B. was not at any time attended with such writing by him the said defendant, either personally or otherwise, nor was such writing sent by him the said defendant for execution or any other purpose whatever; whereby, and by reason and in consequence whereof, and on no other account whatsoever, the said A. B. after the said defendant was so retained and employed as aforesaid, and after the expiration of such reasonable time as aforesaid for the drawing, &c. the said A. B. with such writing as aforesaid, to wit, on, &c. died so seised as aforesaid of and in the estate and premises so intended to be devised by him as aforesaid intestate, and without making any such intended will as aforesaid, and the said plaintiff his said intended devise in such will hath in consequence thereof lost and been deprived of the said benefit of the said intended devise to her, and the said estate and premises so intended to be devised to her as aforesaid descended, came to, and were and are vested in and inherited by another and different person than her the said plaintiff; to the damage of the said plaintiff of one thousand pounds; and therefore she brings her suit,

V. LAWES.

Mr. Lawes dissuaded this action.

MIDDLE.

Declaration against a post-boy for running over plaintiff with a chaise, and breaking his legs.

J. T. } MIDDLESEX, to wit. For that the said defendant
 against } heretofore, to wit, on, &c. at, &c. in, &c. was driving
 W. A. } a certain carriage called a chaise, and certain cattle then
 and there drawing the same, and then and there had the care, con-
 duct, and management of the said cattle, and of the driving
 thereof; yet the said defendant then and there so negligently and
 unskilfully managed and behaved himself in the premises, and so
 badly, ignorantly, carelessly, and negligently drove, managed,
 governed, and guided the said cattle and carriage, that for want
 of due and proper care in the said driving thereof, the said carriage
 and the wheels thereof, and one of the said cattle then and there
 drawing the same, then and there ran and struck against the said
 plaintiff with great force and violence, and then and there struck
 and knocked him down, and then and there ran and passed upon
 and over him the said plaintiff, and broke and fractured the legs
 of the said plaintiff, and otherwise hurt, bruised, and wounded
 him; by means of which said premises the said plaintiff became
 and was, and from thence hitherto hath been, and still is rendered
 sick, sore, lame, and indisposed, and so is likely to continue, and
 hath then been, and still is disabled from doing and transacting
 his affairs and business, and was and hath been forced and obliged
 to lay out and expend a large sum of money, to wit, the sum of
 one hundred pounds, and must hereafter lay out more in chirur-
 gical and other assistance, and in and about his cure. [A second
 Count, only instead of a chaise call it a post chariot.]

V. LAWES.



The accident having happened by neg- must be trespass on the case, and not
 ligence, and not wilfulness, the action vi et armis.

Declaration by the governors, &c. of Bedford Level against defendant for negligently conducting his barges, and running foul of the sluices, &c.

THE GOVERNOR OF BEDFORD LEVEL } NORFOLK, to
 against } wit. The governors,
 CRISPE. } bailiffs, and common-
 alty of the company of conservators of the great level of the
 town called Bedford Level complains of John Crispe, being, &c.;
 for that whereas the said governors, bailiffs, and commonalty, on
 the twenty-first of August 1775, were possessed of and in a
 certain sluice or floodgate called Deuver sluice, of great value,
 to wit, of the value of ten thousand pounds, erected, standing,
 and being in and upon a certain river called the river Ouze, in
 the parish of Deuver, in the said county of Norfolk; and whereas
 the said John, on the same day and year aforesaid, at the parish
 aforesaid, in the said county, was possessed of and in divers, to
 wit, ten vessels and lighters then floating and being upon the said
 river there, which said vessels or lighters were then and there
 navigating by himself and certain servants of him the said John,
 and the said John then and there by himself and his said servants
 had the care, management, government, and direction of the
 said vessels and lighters so floating and navigating upon the said
 river as aforesaid; yet the said John and his said servants so care-
 lessly,

lessly, negligently, incautiously, and unskilfully steered, directed, and managed the said vessels or lighters of the said John, that the said vessels or lighters, by and through the mere negligence and unskilfulness of steering, managing, and conducting thereof, violently drove against and ran foul of the said sluice of the said governors, bailiffs, and commonalty, and then and there went with such force and violence against the gates of the said sluice, that the same were thereby not only greatly broken, shattered, and carried away, but the said governors, bailiffs, and commonalty have been obliged to lay out and expend a large sum of money, to wit, the sum of thirty pounds, in and about amending and repairing the said sluice, but all the foundations and other parts of the said sluice have been and are greatly weakened, damaged, shaken, and shattered, so that the sluice is in danger of giving way and falling down, to wit, at, &c. [2d Count same as the first, only leaving out the words in Italic, and making it by his servants only]; whereupon the said governors, bailiffs, and commonalty say that they are injured, and have sustained damage to the value of one thousand pounds; and therefore, &c.

Drawn by Mr. CROMPTON.

MIDDLESEX, to wit. Margaret Duff complains of John Charlton, being, &c.; for that whereas the said John, on the sixteenth of December 1786, at Westminster, in the county of Middlesex, was possessed of a certain chariot or carriage, and certain cattle, to wit, two horses drawing the same; and the said John, by a certain coachman and servant of him the said John, then and there had the management, care, and direction of the said chariot or carriage, and the said cattle drawing the same, to wit, at, &c.; yet the said John, not minding or regarding his duty in this behalf, by his said coachman and servant, took so little and so bad care of the said cattle so drawing the said chariot or carriage, and of the said chariot or carriage so drawn as aforesaid, that by and through the mere negligence, carelessness, and mismanagement of the said John and the said coachman or servant so employed by the said John in that behalf, and for want of due and proper care of the said John and the said coachman or servant, with great force and violence drove the said cattle, chariot or carriage against, upon, or over the said Margaret as she the said Margaret was then and there in a certain street and king's highway called Chancery Lane, crossing over the same, to wit, at, &c. whereby the ribs of the said Margaret were broken, her hip bone dislocated, her arms and head, and divers other parts of her body greatly fractured and bruised, and the said Margaret thereby became and was lamed and crippled, sick, and disordered, for a long space of time, to wit, from thence until the day of exhibiting the bill of the said Margaret, and during all that time was, and still is wholly hindered and disabled from following her necessary affairs and businesses, and hath been put to great expence, and laid out

Declaration against defendant for so negligently by his servant driving his carriage, that he drove over plaintiff, and broke her ribs.

a large sum of money, to wit, the sum of twenty pounds in and about the setting, curing, replacing, and healing of the said ribs, hip bone, and the said arms, head, and other parts of the said body of the said Margaret, of the said fractures and bruises, and in and about healing and curing the said Margaret of the said sicknesses, lamenesses, bruises, wounds, hurts, and disorders, to wit, at, &c. to the damage of two hundred pounds. Pledges, &c.

Drawn by J. GRAHAM.

Declaration at the suit of the proprietors of a stage coach against their coachman, for losing a trunk and its contents, which they were obliged to pay for to the owner.

LONDON, to wit. John Glazier, &c. complain of Edward Prior being, &c ; for that whereas the said plaintiffs, at the time of the committing of the several grievances hereafter next mentioned, were, and for a long time then last past had been the owners and proprietors of a certain common stage coach or carriage for the carriage of passengers, goods, and parcels for hire, from and between London aforesaid and the city of Bath, in the county of Somerset, and so back again from the said city of Bath to London aforesaid, for certain reasonable rates and prices to be paid them for the same, to wit, at London aforesaid, in the parish of St. Marylebow, in the ward of Cheap: And whereas whilst they the said plaintiffs were such owners and proprietors of the said coach or carriage as aforesaid, and at the time of the committing of the several grievances hereafter mentioned, the said defendant was the servant of them the said plaintiffs, well and faithfully to serve them in the driving, conducting, and managing of the aforesaid coach or carriage, and in the carrying of passengers therein, and also in the carrying, taking, carting, and delivering of the goods and parcels sent and carried thereby, to wit, at, &c. : And whereas afterwards, and whilst the said E. P. was such servant of the said plaintiffs, and had the driving, conducting, and management of the aforesaid coach as aforesaid, to wit, on, &c. at, &c. one H. S. then a passenger in and by the aforesaid coach, delivered to him the said E. P. so being such servant of them the said plaintiffs as aforesaid, and having the driving, &c. of the said coach as aforesaid, a certain trunk or chest containing divers goods and chattels, to wit, twelve shirts, &c. &c. &c. of him the said H. S. of a large value, to wit, of the value of fifty pounds of lawful, &c. to be safely and securely carried and conveyed in and by the said coach from a certain place between the aforesaid city of B. and London aforesaid, to wit, from Reading, in the county of B. to London aforesaid, and there, to wit, at London aforesaid, to be safely and securely delivered to him the said H. S. ; by reason of which said premises, he said defendant ought safely and securely to have carried and conveyed the said trunk or chest of the said H. S. with its aforesaid contents, in and by the said coach from R. aforesaid to L. aforesaid, and there, to wit, at L. aforesaid, to have safely and securely delivered the same to the said H. S. ; nevertheless † the said defendant, not regarding his duty as such servant as aforesaid, but contriving and maliciously intending

intending to injure, aggrieve, and damnify the said plaintiffs his masters as aforesaid in this behalf, and to put them to great trouble and expence, did not in and by the aforesaid coach of them the said plaintiffs, safely and securely carry or convey the said trunk or chest of the said H. S. and its aforesaid contents so delivered to him the said E. P. as aforesaid, from R. aforesaid to L. aforesaid, and there, to wit, at L. aforesaid, safely and securely to deliver the same to the said H. S. according to his duty as such servant as aforesaid in that behalf, nor hath he at any time whatsoever delivered the same to the said H. S. but on the contrary thereof the said defendant so carelessly and negligently managed and conducted himself in his aforesaid service, and took so little and such bad care of the said trunk or chest, and its aforesaid contents, that the aforesaid trunk or chest, and its aforesaid contents were, after the delivery thereof to him the said defendant as aforesaid, to wit, on, &c. at, &c. by the mere negligence, inattention, and want of care of the said defendant in such his service as aforesaid, wholly and totally lost; whereby they the said plaintiffs so being such owners and proprietors of the said coach as aforesaid, were afterwards, and before the exhibiting the bill of the said plaintiffs, to wit, on, &c. forced and obliged to pay, and they did then and there pay to the said H. S. the owner of the aforesaid trunk or chest and its aforesaid contents so lost in the manner and by the means aforesaid, a large sum of money, to wit, the sum of seventy pounds of lawful, &c. being the value of the said trunk or chest and its aforesaid contents; and they the said plaintiffs, by reason and means, and on occasion of the committing of the grievance aforesaid by the said defendant, also wholly lost all profit, benefit, and advantage that would have arisen and accrued to them from the safe carriage, conveyance, and delivery of the aforesaid trunk and its aforesaid contents in and by their aforesaid coach, and their said coach is also fallen into great disrepute by means of the aforesaid negligence of said defendant, their said servant as aforesaid, to wit, at, &c. : And whereas ^{2d Count.} the said plaintiffs, so being proprietors and owners of the aforesaid coach as aforesaid, and the said defendant, so being such servant of them the said plaintiffs as aforesaid, the aforesaid H. S. therefore, to wit, on, &c. delivered to them the said plaintiffs, so being such proprietors of the said coach as aforesaid, a certain other trunk or chest containing divers other goods and chattels, to wit, twelve other shirts, &c. &c. &c. of him the said H. S. of a large value, to be by them safely and securely carried and conveyed in and by the said coach from the aforesaid city of B. to London aforesaid, and there, to wit, at London aforesaid, to be safely and securely delivered to the said H. S. for certain reasonable price and reward therefore paid by the said H. S. to them the said plaintiffs, as such proprietors as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid: And the said plaintiffs in fact further say, that the said H. S. so having delivered to them such last-mentioned trunk or chest containing as aforesaid, for the purpose aforesaid; and the said defendant so being such servant of them the said plaintiffs

3d Count.

tiffs as aforesaid, the said last-mentioned trunk or chest, with its aforesaid contents, was afterwards, to wit, on, &c. at, &c. delivered to, and the said defendant, as such servant as aforesaid, then and there had and received the same to be by him safely and securely carried and conveyed in and by the aforesaid coach of them the said plaintiffs, from a certain place between the city of Bath and London aforesaid, to wit, from *Speenhill*, in the county of Berks, to London aforesaid, and there, to wit, at London aforesaid, to be safely and securely delivered to him the said H. S.; by means of which said several last-mentioned premises, he the said defendant, as such servant as aforesaid, ought safely and securely to have carried and conveyed the said last-mentioned trunk or chest of the said H. S. with its aforesaid contents, in and by the aforesaid coach of them the said plaintiffs, from *Speenhill* aforesaid to London aforesaid, and there, to wit, at London aforesaid, to have safely and securely delivered the same to the said H. S.; nevertheless, &c. [as in 1st Count from this mark † to the end of the Count, only substituting *Speenhill* for *Reading*]: And whereas the said plaintiffs, so being proprietors and owners of the said coach as aforesaid, and the said defendant, so being such servant of them the said plaintiffs as aforesaid, and having the driving, conducting, and management of the said coach heretofore, to wit, on, &c. a certain other trunk or chest containing divers other goods and chattels of a large value, was delivered to the said defendant as such servant as aforesaid, to be by him safely and securely carried and conveyed in and by the aforesaid coach from a certain place between the aforesaid city of Bath and London aforesaid, to wit, from *Reading*, in the county of B. to London aforesaid, and there, to wit, at London aforesaid, to be safely and securely delivered to the aforesaid H. S.; yet the said defendant, not regarding † his duty as such servant as aforesaid, but contriving and maliciously intending to injure and damnify the said plaintiffs in this behalf, did not in and by the said coach of them the said plaintiffs, safely and securely carry and convey the said last-mentioned trunk or chest, and its aforesaid contents, from R. aforesaid to L. aforesaid, and there safely and securely deliver the same to the said H. S. but on the contrary the said defendant conducted himself so carelessly and negligently in his said service, that the said last-mentioned trunk or chest, and its aforesaid contents were, after the delivery thereof to him the said defendant for the purpose aforesaid, to wit, on, &c. by and through the carelessness, inattention, and negligence of him said defendant, totally lost, to wit, at London aforesaid, in the parish and ward aforesaid; by means whereof they the said plaintiffs were afterwards, to wit, on, &c. forced and obliged to pay, and did actually pay to the said H. S. the owner of the said last-mentioned trunk or chest, and the goods and chattels therein contained as aforesaid, another large sum of money, to wit, the further sum of seventy pounds of like, &c.; and they the said plaintiffs, by reason and means, and on occasion of the committing of the said last-mentioned grievance by the said defendant also wholly

wholly lost all profit, &c. that would otherwise have arisen and accrued to them from the safe carriage, conveyance, and delivery of the said last-mentioned trunk or chest and its contents, in and by their aforesaid coach, and their said coach is also fallen into great disrepute by means of the said last-mentioned negligence of the said defendant, their said servant as aforesaid, to wit, at, &c.: And 4th Count. whereas the said plaintiffs, so being the proprietors and owners of the said coach, and the said defendant so being such servant of them the said plaintiffs as aforesaid, a certain other trunk or chest, containing divers other goods and chattels of a large value, was on the aforesaid fourteenth day of, &c. delivered to them the said plaintiffs, so being such proprietors of the said coach as aforesaid, to be by them safely and securely carried and conveyed in and by their aforesaid coach from the said city of B. to L. aforesaid, and there, to wit, at L. aforesaid, to be safely and securely delivered to the said H. S. for a certain reasonable price or reward therefore paid by the said H. S. to them the said plaintiffs, as such proprietors as aforesaid, to wit, at L. aforesaid, in the parish and ward aforesaid: And the said plaintiffs in fact further say, that the said defendant so being their servant as aforesaid, the said last-mentioned trunk or chest so delivered to them for the purpose aforesaid, with its aforesaid contents, was, after the delivery thereof to them as aforesaid, to wit, on, &c. at, &c. delivered to, and the said defendant, as such servant of them the said plaintiffs as aforesaid, then and there had and received the same from them the said plaintiffs his masters as aforesaid, to be by him safely and securely carried and conveyed in and by their aforesaid coach from a certain place between the said city of B. to L. aforesaid, to wit, from Speenhill, in the said county of B. to London aforesaid, and there, to wit, at L. aforesaid, to be safely and securely delivered to the said H. S.; yet the said defendant, not regarding, &c. &c. [as in the 3d Count from this mark † to the end of the Count.] Damages three hundred pounds. V. LAWES.

Verdict for plaintiffs for the whole of their demand.

LONDON, to wit. A. B. R. R. and J. B. complain of E. D. being, &c.; for that whereas the said Edward heretofore, to wit, on, &c. at, &c. was the owner or proprietor of a certain ship or vessel called the Charming Sally, whereof one J. V. was then master, and which said ship or vessel was then lying in the port of London, to wit, in the river Thames, and then and there bound from thence on a certain voyage to Liverpool, in the county of L.; and the said E. being such owner of the said ship or vessel as aforesaid, and the said ship or vessel being bound on such voyage as aforesaid, they the said plaintiffs, on, &c. shipped and put on board, was shipwrecked, and the gunpowder was entirely lost. The insurers refused to pay the insurances, and this declaration was drawn against the owners of the ship for deviating from the usual passage from A to B.

Declaration, the plaintiff had delivered to the defendant a cask of gunpowder to be carried from A. to B. and had insured the same, the defendant, by deviating from the customary passage,

D d 3

board,

(1) "the said ship or vessel ought in that voyage to have made the same, by and according to the direct, usual, and customary way and passage, without deviation or departure from or in the same, without sufficient and reasonable cause for so doing; yet the said plaintiffs in fact further say, that the said ship or vessel did not go or make such voyage as last aforesaid,"

(2) "her"

board, and caused to be shipped and put on board the said ship or vessel a certain large quantity, to wit, one hundred and ten barrels of gunpowder of them the said plaintiffs, to be carried and conveyed therein from the said port of L. to L. aforesaid for them the said plaintiffs, for certain freight or reward to the said Edward on that occasion: And the said plaintiffs in fact further say, that although the said gunpowder was then and there accordingly received and taken into and on board of the said ship or vessel for such purpose as aforesaid, and although the said ship or vessel did afterwards set sail and proceed from the said port of L. upon her said intended voyage, and with the said gunpowder in and on board her as aforesaid, and although (1) *the said plaintiffs had made and caused to be made certain lawful insurances by the usual and customary writings or policies of assurance upon the said gunpowder against the perils of the seas in that voyage, to wit, a certain insurance of one hundred and fifty pounds with one J. M. and a certain other insurance of one hundred and fifty pounds with one J. B. and although it was then and there the duty of the said Edward, as such owner of the said ship or vessel as aforesaid, to have made such voyage as aforesaid with the said ship or vessel, by and according to the direct, usual, and customary way and passage, without deviation or departure from, or delay or hindrance in the same, without reasonable or sufficient cause for so doing, in order that the said plaintiffs, so being such freighters and proprietors of the said gunpowder as aforesaid, and having made such assurances thereon as aforesaid, might not lose or be deprived of the benefit of such assurances; yet the said Edward, not regarding his duty as such owner of the said ship or vessel as aforesaid, but neglecting the same, did not go or make, or cause or procure to be made and gone such voyage as aforesaid with his said ship or vessel, by and according to the direct, usual, and customary passage, without deviation or departure from, or delay or hindrance in the same, without a reasonable or sufficient cause for so doing, but neglected and omitted so to do, and on the contrary thereof afterwards, and after the said ship or vessel had so sailed and proceeded on her said intended voyage as aforesaid, and before she completed the same, to wit, on, &c. by one J. V. his then servant, and then and there being in and having the command of the said ship or vessel, wrongfully, and without any sufficient and reasonable cause whatsoever for so doing, did deviate and depart from and out of the direct, usual, and customary way and passage in and of the said voyage from the said port of L. to L. aforesaid, with the said ship or vessel with the said gunpowder of the said plaintiffs in and on board (2) *the same*, that is to say, from and out of such direct, usual, and customary way and passage in that voyage up and into a certain river called, &c. and did then and there unnecessarily, and without sufficient and reasonable cause for so doing, touch and stay at, &c. in the said river there for a long space of time, to wit, from thence until and upon the twentieth day of, &c. and although the said ship or vessel did*

after-

afterwards proceed and sail from thence on her said intended voyage to L. aforesaid, was afterwards, and before her arrival there in that voyage, to wit, on, &c. (3) *by the violence of the winds and waves cast upon a bank, and was thereby then and there broke, shattered, bulged, disjointed, and wholly lost*, and the said gunpowder of the said plaintiffs so laden and being on board her as aforesaid, was thereby greatly wetted, injured, damaged, and wholly spoiled, whereby they the said plaintiffs but for such deviation (4) *and departure of the said ship or vessel from and out of such direct, usual, and customary way and passage in that voyage as aforesaid, and for and by reason of her having so touched and staid at, &c. in the said river called, &c.* could, might, and would by law have recovered and compelled payment of their damages so by them sustained by such loss under and by virtue of (5) *the said several writings or policies of assurance so put on board the said ship or vessel as aforesaid*; yet the said plaintiffs in fact further say, that by reason and means of such deviation and delay in that voyage as aforesaid, and on no other account whatsoever, the said insurances so by them made on the said gunpowder as aforesaid, became and were avoided, and rendered ineffectual and of no avail, and the said several underwriters or insurers on those occasions became and were exonerated and discharged from all sum and sums of money that would otherwise have been due and payable from them under their said several insurances for and in respect of the said loss or damage so sustained by the said plaintiffs as aforesaid, and in consequence thereof they the said plaintiffs failed in the recovery of such sums of money in certain actions brought by them the said plaintiffs against the said J. M. and J. B. as such underwriters or insurers as aforesaid on the said insurances so by them made as aforesaid, without knowing or being apprized of such deviation or delay as aforesaid, and were forced and obliged to pay, and did in fact pay divers sums of money, amounting to a large sum of money, to wit, to the sum of two hundred pounds, for and in respect of the costs and charges as well of the defence of them the said J. M. and J. B. of such actions as of the prosecution thereof by them the said plaintiffs, to wit, at, &c.: And whereas the said Edward, &c. &c. &c. [Finish this Count same as the first, only omitting what is in *Italic*, and inserting in lieu thereof what is in the margin.]

(3) "by the dangers and perils of the seas"

(4) "as aforesaid"

(5) "certain writings or policies of assurance, to wit, a certain writing or policy of assurance before then underwritten and subscribed by the said J. M. for 150l. and a certain other writing or policy of assurance before then underwritten and subscribed by the said J. B. for 150l. upon the said gunpowder so put on board the said last-mentioned ship or vessel as aforesaid,"

2d Count.

V. LAWES.

KINGSTON UPON THAMES, to wit. Woodman Wavell, by E. James his attorney, complains against Thomas Chitty, in a plea of trespass on the case; for that whereas said plaintiff, before and at the time of committing the grievance hereafter next mentioned, was lawfully possessed, *amongst other lands within the jurisdiction of this court*, of a certain close called Longbottom (1), situate, lying, and being in the parish of Effingham, in the county of Surry, and within the jurisdiction of this court, and of the

Declaration by master against his shepherd; 1st Count, for suffering sheep to eat up tares, contrary to express orders. 2d, for permitting it through negligence. (1) "sown with"

*said certain tares so therein growing and being as aforesaid, and the said defendant was then and there in the service of said plaintiff, as his shepherd, at and for certain wages or reward; and said plaintiff being so possessed, and the said defendant so being his servant as aforesaid, he said defendant, just before the grievance hereafter next mentioned, to wit, on the first of August, A. D. 1783, at the parish aforesaid, in the county and jurisdiction aforesaid, had, as such servant or shepherd of said plaintiff as aforesaid, the superintendence and care of certain other sheep of him said plaintiff: And thereupon afterwards, and whilst said defendant had the care of said sheep as such shepherd or servant of him said plaintiff as aforesaid, to wit, on the day and year aforesaid, at the parish aforesaid, in the county and jurisdiction aforesaid, he the said plaintiff lawfully ordered, enjoined, directed, and commanded said defendant, as such servant or shepherd of him said plaintiff as aforesaid, that he the said defendant should not permit or suffer said sheep of him said plaintiff to eat, damage, or depasture upon the said tares so growing and being in said close called Longbottom as aforesaid, but should hinder and prevent them from so doing: And said plaintiff in fact saith, that although said defendant, according to his duty as such shepherd as aforesaid, ought to and could have then and there hindered and prevented said sheep of him said plaintiff from eating, damaging, and depasturing upon the aforesaid tares of said plaintiff †; yet said plaintiff in fact saith, the said defendant wholly disregarding his duty as such shepherd or servant of and to him said plaintiff as aforesaid, and contriving and intending to injure him, did not regard or abide by the said orders, directions, and commands of said plaintiff so by him given to said defendant as aforesaid, nor hinder or prevent said sheep from eating, damaging, and depasturing upon the aforesaid tares of him said plaintiff, but wholly neglected so to do, and on the contrary thereof after the giving such orders and directions to him said plaintiff as aforesaid, and before levying of the plaint of said plaintiff in this behalf, and whilst he the said defendant was such servant or shepherd of said plaintiff, and had the superintendence and care of his said sheep as aforesaid, to wit, on the day and year aforesaid, and on divers other days and times between that day and the levying the plaint of said plaintiff, at, &c. in, &c. aforesaid, wrongfully and unjustly, and contrary to his duty as such shepherd or servant of said plaintiff as aforesaid, and without the leave or licence of said plaintiff, suffered and permitted said sheep of him said plaintiff to go and come amongst, and to graze and depasture upon, and eat up, consume, destroy, damage, and spoil said tares of him said plaintiff, so growing in said close called Longbottom as aforesaid, and being of a large value, to wit, of the value of, &c. to wit, at, &c. in, &c. aforesaid: And whereas, &c. [as in 1st Count, till you come to this mark † *supra*, omitting what is in Italic, and inserting what is in the margin; then proceed as follows]: Yet said plaintiff in fact further saith, that said defendant not regarding his duty as such shepherd*

herd or servant of and to him said plaintiff as aforesaid, but contriving to injure him said plaintiff, did not hinder or prevent said last-mentioned sheep from eating, depasturing upon, and damaging said last-mentioned tares of him said plaintiff, but on the contrary thereof, whilst said plaintiff was so possessed as aforesaid, and whilst said defendant had the superintendence and care of said last-mentioned sheep, as such shepherd or servant of said plaintiff as aforesaid, to wit, on the day and year last aforesaid, and on divers other days and times between that day and the levying of the plaint of said plaintiff, to wit, at, &c. in, &c. aforesaid, so negligently behaved and conducted himself as such shepherd or servant of him said plaintiff as aforesaid, and paid so little attention to the said sheep, that the said sheep thereby, and for want of due and proper care and attention over the same by said defendant, as such shepherd or servant of said plaintiff as aforesaid on those several days and times wandered, strayed, and came into and amongst said last-mentioned tares of said plaintiff, and eat up, depastured upon, damaged, and spoiled the same, to wit, at, &c. in, &c. aforesaid, to the damage of said plaintiff of pounds, for which he brings suit, &c. Pledges, &c. V. LAWES.

LONDON, to wit. P. W. complains of J. N. being, &c.; Declaration for giving false instructions to a bailiff, whereby he arrested an improper person.
 for that whereas the said J. heretofore, to wit, &c. sued and prosecuted out of the court of our lord the king before the king himself here, a certain writ of our said lord the king called a *pluries latitat* against one B. R. directed to the sheriff of Essex, and whereby our said lord the king commanded the said sheriff as he had there-
 tofore oftentimes commanded him the said sheriff, that he should take the said B. R. if he should be found in his bailiwick, and keep him safe, so that he might have his body before our said lord the king at Westminster on Wednesday next after three weeks of the Holy Trinity then next, to answer the said John in a plea of trespass, and also to a bill of the said J. against the said B. R. for eighty pounds upon promises, according to the custom of the said court of our said lord, before the king himself to be exhibited, and that the said sheriff should have there then that writ; which said writ was duly indorsed and marked for bail for thirty-seven pounds twelve shillings; and being so indorsed and marked for bail, was afterwards, and before the return thereof, to wit, on, &c. to wit, in, &c. delivered by the said J. to R. P. esquire, then and there being sheriff of the said county of Essex, to be by him executed in due form of law; by virtue of which said writ the said sheriff afterwards, to wit, on, &c. in, &c. duly made out and granted his warrant under his hand and seal of office directed to the said P. he the said P. then and there being one of the bailiffs of the said sheriff, and whereby the said sheriff then and there commanded him the said P. that he should take the said B. R. if he should be found in the said sheriff's bailiwick, and him safely keep, so that the said sheriff might have his the said B. R. body before our said lord the king

king at Westminster on the said Wednesday, &c. then next, to answer the said John in a plea and bill aforesaid; which said warrant was also then and there duly marked for bail for thirty-seven pounds twelve shillings; and being so marked for bail, the said John afterwards, and before the return of the said writ, delivered, and caused the said warrant to be delivered unto him the said P. (he the said P. being then and there such bailiff of the said sheriff as aforesaid) to be by him executed: And the said P. in fact further saith, that at the time of the said delivery of the said warrant unto him the said P. for execution as aforesaid, and from thence until and at and after the arrest hereafter next mentioned, he the said P. did not know, but was then and there ignorant of and wholly unacquainted with the person of the said B. R. the defendant in the aforesaid writ and warrant; yet the said John, well knowing such premises, and also then and there well knowing the person of the said B. R. the defendant in the said writ and warrant, but contriving to deceive and injure the said P. afterwards, and after the delivery of the said warrant unto him the said P. for execution as aforesaid, and before the execution thereof, and also before the return of the said writ, and whilst the said P. was so unacquainted with the person of the said B. R. the defendant in the said writ and warrant as aforesaid, to wit, on, &c. at, &c. did falsely, fraudulently, and deceitfully assert and affirm unto the said Peter, so then and there being such bailiff of the said sheriff of Essex as aforesaid, and having the said warrant for execution as aforesaid, the said B. R. the defendant in the said writ and warrant, lived at a certain house, to wit, a certain house numbered 8, near the turnpike, Stratford (that is to say, Stratford, in the county of Essex), that he was about five feet six inches, square set, and had been a militia officer, and that he married a daughter of Mrs. Pepperhorn, who then had a farm near Laytonstone (that is to say, Laytonstone, in the county of Essex), and did then and there wrongfully instruct, order, and direct the said P. so being then and there such bailiff, and so having the aforesaid warrant for execution as aforesaid, to take and arrest the person answering and being of the description so by him given as aforesaid, as and for, and as being the said B. R. the defendant in the aforesaid writ and warrant; whereupon he the said P. being still ignorant of and wholly unacquainted with the person of the said B. R. the defendant in the said writ or warrant, and not then and there knowing that the said person so by the said J. N. described as aforesaid, was not the said B. R. the defendant in the said writ or warrant, but then and there conceiving such person to be the said B. R. the defendant in the said writ or warrant, did then and there proceed to, and did then and there under and in consequence, and in pursuance of the said instructions, orders, and directions of the said J. and by and through mistake take and arrest the said person so by the said J. described as aforesaid, upon and under the said warrant, as and for, and as being the said B. R. the defendant in the said writ or warrant; but in truth and in fact the said P. saith, that the said person so by the said J. described as aforesaid,

said, and by him the said P. arrested, was not the said B. R. the defendant in the said writ and warrant, but was another and different person, and of another and different description than the said Benjamin Rutland, the defendant in the said writ and warrant, to wit, one J. R. to wit, at, &c. in, &c. : And so the said P. in fact saith, that the said J. N. in and by his said assertion, affirmation, instructions, orders, and directions so respectively made and given to him the said P. as aforesaid, then and there, that is to say, on, &c. at, &c. did falsely and fraudulently deceive him the said P. that thereby and in consequence thereof, and of his having so taken and arrested the said J. R. as aforesaid, he the said P. was afterwards, and before the exhibiting of the bill of him the said P. against the said J. N. sued and prosecuted by the said J. R. in an action or suit at law in this court here for such arrest and false imprisonment of him as aforesaid, and the said J. R. did afterwards recover judgment against him the said P. in such action or suit for a large sum of money, to wit, the sum of twelve pounds ten shillings for his damages and costs in such action, whereof the said J. N. had notice, but refused to satisfy such judgment, and in consequence thereof the said J. R. did afterwards commence another action or suit against him the said P. in this court hereupon the said judgment, and thereby and by reason thereof, and of the said recovery so had and obtained against him by the said J. R. as aforesaid, he the said P. was afterwards, to wit, on, &c. at, &c. forced and obliged to, and did in fact pay a large sum of money, to wit, the sum of fourteen pounds in satisfaction and discharge of the said judgment so obtained against him by the said J. R. as aforesaid, and the said action so thereon brought as aforesaid, and the costs and charges thereof: And the said Peter also saith, that by reasons of such actions being so brought against him as aforesaid, he the said P. was necessarily forced and obliged to lay out, expend, and pay, and did in fact lay out, expend, and pay divers other sums of money, amounting in the whole to a large sum of money, to wit, the sum of ten pounds, for and on account of his own charges and costs in and of the defence and settlement of the said actions or suit, to wit, at London aforesaid, in, &c.

V. LAWES.

SURRY, to wit. Richard Thornton, by Ralph Hodgson his attorney, complains of Mary Clarke, in a plea of trespass on the case, &c. ; for that whereas heretofore, to wit, on, &c. at, &c. and within the jurisdiction of this court, in consideration that said plaintiff, at the special instance and request of said defendant, had then and there let and demised unto the said plaintiff a certain ready-furnished lodging, consisting of a certain (1) room or apartment in, and part and parcel of a certain (2) messuage or dwelling-house, situate at, &c. in, &c. within the jurisdiction aforesaid (3), and of certain household furniture (4) therein being, and with and by which the same were then and there furnished, she

Declaration for using the furniture in a ready-furnished lodging in an untenantlike manner, and damaging the same.

(1) "other"

(2) "other"

(3) "with"

(4) "of him said plaintiff in and belonging to said

last-mentioned room or apartment,"

de-

(5) "to take defendant undertook, &c. said plaintiff (5) *to use and occupy said room and apartment, and the furniture thereof*, in a reasonable and tenant-like manner: And said plaintiff in fact further saith, that although the said defendant afterwards, *and before the levying the plaint of said plaintiff*, to wit, on, &c. entered into the possession of the said (6) *ready-furnished lodging* so to her let and demised as (6) "last-mentioned room or apartment" aforeaid (7), and used and occupied the same under that demise from thence for a long time, to wit, at, &c. in, &c.; yet said defendant, not regarding, &c. but contriving, &c. did not, during the time she so used and occupied the said (8) room and apartment *so to (9) her demised aforeaid, use the said furniture thereof in a reasonable and tenant like manner*, according to the tenor and effect of her said promise and undertaking, but on the contrary thereof she the said M. (10) *whilst she was so possessed of the said room or apartment so demised to her as aforeaid, with the afore-said furniture thereof, and before the levying the plaint of said plaintiff, to wit, on, &c. in the county and jurisdiction aforeaid, and the said furniture in a very unreasonable and untenant-like manner in this, to wit, that she said defendant then and there wetted, dirtied, damaged, and spoiled one feather-bed of said plaintiff of a large value, to wit, of the value of five pounds of lawful, &c. being part of the furniture of the said room or apartment so demised to her said defendant as aforeaid, by means whereof he said plaintiff bath wholly lost and been deprived of the use, benefit, and advantage of said featherbed, and the same is become of little or no use or value whatsoever, to wit, at, &c. &c.*: And whereas, &c. &c. [2d Count like the first, omitting what is in Italic, and inserting what is in the margin.]

tiff of a large value, to wit, of the value of five pounds of like lawful, &c. part and parcel of said furniture, by and through the mere negligence, inattention, and want of care, became wetted, &c. to wit, at, &c. so said plaintiff his damage of forty pounds, and therefore he brings, &c."

Plaintiff obtained a verdict.

V. LAWES.

Declaration by PUGH } LONDON, to wit. Richard Pugh complains of
the owner of a hackney-coach }
against defend- }
ant, who called }
his coach off the }
stand, and put }
into the same a }
quantity of }
smuggled goods, }
which being }
seized by the ex- }
cise officers, the }
coach, horses, }
and harness con- }
veying the same }
were condemn- }
ed and forfeited.

ogainst }
LLOYD. }
Edward Lloyd being, &c.; for that whereas the said
Richard, before and at the time of the committing of
the several grievances hereinafter mentioned, was the owner of
a certain licensed hackney-coach, numbered 330, and of
divers, to wit, two horses drawing and yoked to the same,
and of the harness thereto belonging, of great value, to wit,
of the value of one hundred pounds; and which said coach and
horses, on, &c. at, &c. to wit, in the parish of, &c. were in a
certain public street called Gracechurch-street, ready to be called
and hired by any person or persons wanting the same: And where-
as the said Edward, a little before the time of the committing of
the grievance hereinafter mentioned, to wit, on the same day and
year aforeaid, at London aforeaid, in the parish and ward afore-
said,

said, did call the said coach and horses then and there being in the said public street for the purpose aforesaid, and afterwards did enter and get into the same, and did order and direct the said Richard to drive him the said Edward in his said coach into and along a certain street called Goswell-street, in the several parishes of St. John, Clerkenwell, and St. Luke, Old-street, in the county of Middlesex, and thereupon the said Richard, according to the aforesaid order and direction of the said Edward, and according to his duty as such master and owner of such hackney-coach as aforesaid, was driving his said coach aforesaid, and horses with the said Edward in the said coach, according to the direction of the said Edward, whereof the said Edward afterwards, to wit, on, &c. at, &c. had notice; yet the said Edward contriving and maliciously intending to injure and prejudice the said Richard, and to cause him to lose his said coach and horses, and the harness of the said horses, did afterwards, to wit, on, &c. at, &c. wrongfully, unlawfully, wilfully, and without the knowledge of the said Richard, take with him the said Edward into the said coach, and put and place in the said coach a certain large quantity of tea, to wit, eighty-one pounds weight of tea, liable and chargeable with the payment of inland duties and other duties to his said majesty, and which said tea had, after the twenty-fourth of June 1724, been clandestinely run and imported from foreign parts to the city of London aforesaid, without his said majesty's duties payable for the same having been paid or secured as they ought to have been, and without due entry having been made thereof at his majesty's custom-house, according to the form of the statute in that case made and provided, and without the same having been brought into any warehouse or warehouses for that purpose, provided at the charge of the importer or importers thereof, and approved of by the commissioners of his said majesty's customs, or the major part of them for the time being, as by the statute in that case made and provided is directed, contrary to the form of the said statute, by reason whereof the said tea and the said coach of the said Richard, in which the said Edward had put and placed the said tea as aforesaid, and the said horses of the said Richard so as aforesaid yoked and harnessed to and drawing the said coach of the said Richard as aforesaid, and which were made use of in carrying the same tea, were afterwards, and whilst the said Richard was driving and carrying the said Edward and the said tea in the said coach in and along Goswell-street aforesaid, to wit, on, &c. at, &c. arrested and seized by certain officers of his majesty's excise, and for the inland duties upon tea, payable to his said majesty as forfeited to his said majesty, or to such other person or persons as by the laws and statutes of this realm are entitled to such forfeitures, and the said coach and horses of the said Richard, being of the value of one hundred pounds as aforesaid, were afterwards condemned, and thereby then and there became and were wholly lost to the said Richard: And whereas also the said Richard, before and at the time of the committing of the grievance hereinafter next mentioned,

2d Count. with-
 out permis-

tioned,

tioned, to wit, on the ninth of August 1783, at, &c. was the master and owner of a certain other hackney-coach, numbered 330, and of divers, to wit, two horses yoked and harnessed to and drawing the said last-mentioned coach, and which said coach and horses last-mentioned were then and there of great value, to wit, of the value of one hundred pounds, and which said last-mentioned coach of the said Richard was duly licensed to ply for hire within the city of London : And whereas also the said Richard, a little before the time of the committing of the grievance hereinafter next mentioned, to wit, on the same day and year aforesaid, at London aforesaid, &c. was with his said last-mentioned coach and horses plying for hire on a certain public stand for such hackney coaches within the said city of London, to wit, at, &c. : And whereas the said Edward, a little before the time of the committing of the grievance hereinafter next mentioned, to wit, on, &c. at, &c. did call the said Richard with his said last-mentioned coach and horses from off the said last-mentioned stand, and did order and direct the said Richard to go with and drive his said last-mentioned coach and horses to a certain house of him the said Edward, situate, standing, and being in a certain street called Fenchurch-street, in the said city of London : And whereas also afterwards, and a little before the committing of the grievance hereinafter next mentioned, to wit, on, &c. at, &c. the said Richard did according to the said last-mentioned order and direction of the said Edward, and according to his the said Edward's duty as such master and owner of the said hackney coach as last aforesaid, go with and drive, and take his said last-mentioned coach and horses to the said house of the said Edward, whereof the said Edward afterwards, to wit, on, &c. at, &c. had notice ; yet the said Edward contriving and maliciously intending to injure and aggrieve the said Richard, and to cause him to lose his said last-mentioned coach and horses, did afterwards, to wit, on, &c. at, &c. get into the said last-mentioned coach of the said Richard, and did order and direct the said Richard to drive him the said Edward in the said coach into and along a certain street called Goswell-street, in the several parishes of, &c. ; and the said Edward then and there, to wit, at, &c. without the knowledge of the said Richard, did wrongfully and unlawfully take with him the said Edward into the said last-mentioned coach of the said Richard, and put and place in the said last-mentioned coach a certain large quantity of tea, to wit, eighty-one pounds weight of tea, to be carried in the said coach from the said house of the said Edward to Goswell-street aforesaid, he the said Edward not having any proper permit, warrant, or sufferance to remove the said tea from place to place from any officer or officers of his majesty, or from any other person entitled by the laws and statutes of this realm to give or grant to the said Edward such permit, warrant, or sufferance, by reason whereof the said last-mentioned tea, and the said last-mentioned coach of the said Richard, in which the said Edward had put and placed the said last-mentioned tea as last aforesaid, and the said last-mentioned horses of the said Richard as last aforesaid, yoked and

and harnessed to and drawing the said last-mentioned coach as last aforesaid, and which were made use of in carrying the said last-mentioned tea, were afterwards, and whilst the said Richard was driving and carrying the said Edward and the said tea last-mentioned in the said last-mentioned coach from the said house of the said Edward to Goswell-street aforesaid, to wit, on, &c. at, &c. arrested and seized by certain of his majesty's officers of excise, having power and authority so to do, and became and were forfeited to his said majesty, or to such other person or persons as by the laws and statutes of this realm are entitled to such forfeiture, and the said last-mentioned coach and horses being of the value of one hundred pounds as aforesaid, thereby then and there became and were wholly lost to the said Richard; whereupon the said Richard says, that he is injured, and has sustained damage to the value of two hundred pounds, and therefore he brings suit, &c. Pledges, &c.

W. BALDWIN.

FOR that whereas the said plaintiff, at the time of the committing of the grievance hereinafter mentioned, was possessed of a certain horse of great value, to wit, of the value of two hundred pounds of lawful money of Great Britain, standing and being in a certain stable of him the said plaintiff, in the parish of, &c. in the said county: *And whereas the said defendant, long before and at the time of committing the grievance hereinafter mentioned, was possessed of a certain other stable, situate, standing, and being in the parish aforesaid, contiguous and next adjoining to the said stable of the said plaintiff, and only separated and divided therefrom by a thin partition of boards; yet the said defendant, well knowing the premises, but contriving and wrongfully and injuriously intending to hurt, injure, and prejudice the said plaintiff, on, &c. at, &c. wrongfully and injuriously put into and kept in the said stable of him the said defendant a certain horse which was then and there afflicted with and had a certain infectious distemper called the glanders; which said last-mentioned horse he the said George then and there knew to be so afflicted and disordered as aforesaid; and the said defendant so knowing the said last-mentioned horse to be distempered and disordered as aforesaid, kept and caused the same to be kept in his said stable for a long space of time, to wit, for the space of two months: And the said plaintiff further says, that during all the said time the said defendant kept the said distempered horse in the said stable of him the said defendant as aforesaid, he the said defendant did so negligently and carelessly; conduct himself in the administering food, mashes, and other medicines to the said distempered horse, that by and through the neglect and default of the said defendant, the said food, mashes, and other medicines run from the stable of him the said defendant through the partition into the said stable of the said plaintiff, where the said horse of the said plaintiff was then kept as aforesaid; and by means of the premises aforesaid, the said horse of the said plaintiff afterwards, to*

Declaration against a farrier, for keeping an horse that had an infectious disorder in his stable, which was only divided from the plaintiff's stable by a thin partition of boards, and that by and through defendant's negligence, plaintiff's horse caught the disorder, and died thereof.

Wit,

wit, on, &c. at, &c. caught the said distemper called the glanders, and was infected with, and languished and laboured under the same for a long space of time, to wit, for the space of three months, during which he the said plaintiff was obliged to lay out and expend, and did lay out and expend a large sum of money, to wit, the sum of twenty pounds in and about the endeavouring to cure the said horse of and from the said disorder, and the said horse of the said plaintiff afterwards, to wit, on, &c. died of the said distemper so caught by him as aforesaid, to wit, at, &c. : And whereas, &c. [2d Count same as first, only omitting what is in Italic.] Damage two hundred pounds.

I think the action may be maintained by the plaintiff, for the maxim "*Sic utere tuo ut alienum non laedas*," seems to apply strongly to this case. If it could be proved that the defendant was the person liable to keep the partition between the two stables in good repair, I think it would strengthen the case greatly; but even without positive proof of that kind, I think the action may be sup-

ported; for if defendant thought fit to keep a distempered horse in his stable, I think he was bound to guard against any ill consequences ensuing to other persons by it, moving the horse into the next stable, and attending him so negligently as to communicate the disorder, seems to afford a good right of action.

F. BULLER.

Declaration against a man-midwife, for unskilfulness in lacerating the plaintiff's wife's womb.

MIDDLESEX, to wit. G. L. complains of S. C. then and there being, &c.; for that whereas the said S. now is, and for many years last past hath been a surgeon and man-midwife, and during all the time aforesaid had exercised and carried on, and still uses, exercises, and carries on the art, mystery, or profession of a surgeon and man-midwife, to wit, at Westminster aforesaid, in the said county of Middlesex; and whilst the said Samuel so used, exercised, followed, and carried on the said art, mystery, or profession of a surgeon and man-midwife as aforesaid, to wit, on the day of 1777, at Westminster aforesaid, in the said county, the said G. employed the said S. for a reasonable reward to be therefore paid by the said G. to the said S. to deliver one E. L. the wife of the said G. of a certain child with which the said E. L. then and there laboured and was pregnant; and although the said S. did then and there deliver the said E. the wife of the said G. of the said child, yet the said S. then and there so negligently, carelessly, and unskilfully behaved and governed himself in and about the delivery of the said Elizabeth, the wife of the said George, of the said child, that for want of due care and skill of the said S. and by and through the mere neglect, default, and unskilfulness of the said Samuel in that behalf, the said E. afterwards, to wit, on the day of 1777, at Westminster aforesaid, in the said county, became and was afflicted with a certain disease or malady called a stoppage and suppression of urine, and with other great pains and anguish of body, whereby the said G. for a long space of time, to wit, from thenceforth until the day of exhibiting of the bill of the said George, was deprived of and hath lost the service, aid, comfort, and assistance of his said wife: And whereas also the said Elizabeth, the wife of the said

2d Count, unskilfully treating suppression of urine.

NEGLIGENCE.—LIVERY STABLE KEEPER.

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George, afterwards, to wit, on the day of 17 at
Westminster aforesaid, laboured under and was afflicted with a
certain disorder or malady called a stoppage or suppression of
urine, and the said S. so using, exercising, carrying on, and fol-
lowing the art, mystery, and profession of a surgeon and man-
midwife as aforesaid, the said G. afterwards, to wit, on, &c. 1777,
at Westminster aforesaid, employed the said S. for a reasonable
reward to be therefore paid by the said G. to the said S. to draw
off and drain the urine from and out of the body of the said Eli-
zabeth, and to cure her of the stoppage or suppression of urine;
yet the said S. so carelessly, negligently, and unskilfully behaved
and governed himself in and about the drawing off and draining
the urine from and out of the body of her the said E. in and about
the curing her of the said stoppage and suppression, and performed
his operation in this behalf upon the said Elizabeth in so careless,
negligent, and unskilful a manner, that for want of due care and
skill of the said S. and by and through the mere negligence, un-
skilfulness, and default of the said S. in that behalf, the uterus or
womb of her the said Elizabeth was lacerated and wounded in a
great and grievous manner; and the said E. afterwards, to wit,
on the same day and year last aforesaid, became and was afflicted
with a certain disease or malady called an incontineny of urine,
and with other great pains and anguish of body, and the said E.
hath from thenceforth hitherto remained, and still is afflicted with
such laceration or wounding of the uterus or womb, and with the
said incontineny of urine, and with other pains, tortures, and an-
guish, and is rendered incurable, to wit, at Westminster afore-
said, whereby the said George, during all the time last aforesaid,
hath been and still is deprived of the service, aid, comfort, and
assistance of his said wife, to wit, at Westminster aforesaid, in
the said county, to the damage of the said George of two thousand
pounds, and thereof he brings suit, &c. Pledges, &c.

GEO. WOOD.

MIDDLESEX, to wit. C. K. complains of J. C. [The 1st Declaration in
Count was in trover, the second was as follows:] And whereas case against a
the said plaintiff afterwards, to wit, on, &c. at, &c. in, &c. had livery-stable
delivered to the said defendant a certain other horse of him the keeper, for deli-
said plaintiff, of a large value, to wit, of the value of other twenty vering plaintiff's
pounds, to be by him the said defendant safely and securely kept horse to another
for him the said plaintiff at livery, *at certain livery stables kept by person.*
him the said defendant, and situate in the parish and county afore-
said; and although the said defendant then and there had and re-
ceived the said last-mentioned horse of the said plaintiff for the Qu. Horse or
purpose last aforesaid, and ought to have accordingly safely kept n. are, if uncer-
the same; yet the said defendant, not regarding his duty in that tan which,
behalf, but contriving to injure the said plaintiff, did not make use of the
and securely keep the said last-mentioned horse of and for him the general term
said plaintiff, *at the said stables of him the said defendant,* but neg- horse throu he is
lected the declaration.

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lected

(v) "took so little and such bad care of the said last-mentioned horse, and behaved and conducted himself in such negligence and inattention thereupon in the premises, that the said last-mentioned horse thereby, and for want of due and proper care in the keeping thereof,"

lected and omitted so to do; and on the contrary afterwards, to wit, on, &c. at, &c. (1) *did wrongfully, and without the knowledge and consent of the said plaintiff, deliver the same from and out of his said stables to a certain person to the said plaintiff unknown, and did then and there suffer and permit such person to take and carry away the said last-mentioned horse of the said plaintiff, and the said person did then and there accordingly take and carry away the same, whereby the said last-mentioned horse became and was, and from thenceforth hitherto hath been, and still is wholly lost to him the said plaintiff: [3d Count same as first, only omitting what is in Italic, and inserting what is in the margin]: And whereas the said plaintiff afterwards, to wit, on, &c. at, &c. delivered to the said defendant a certain other horse of him the said plaintiff of a large value, to wit, of the value of other twenty pounds of like lawful money, to be kept by him the said defendant for him the said plaintiff at livery, at certain other livery stables kept by him the said defendant, and situate in the parish and county aforesaid, and to be forthcoming and delivered to the said plaintiff upon request; and although the said defendant then and there had and received the said last mentioned horse of and from the said plaintiff for the purpose last aforesaid; and although the said plaintiff afterwards, to wit, on, &c. at, &c. requested the said defendant to deliver the said last-mentioned horse unto him the said plaintiff; yet the said defendant did not, nor would then and there deliver the same unto the said plaintiff, nor was the said last-mentioned horse then and there forthcoming, but on the contrary then and there was, and always from thence hitherto hath been, and still is wholly lost to him the said plaintiff, to wit, at, &c. in, &c.*

V. LAWES.

Case for enticing away and harbouring plaintiff's wife.

CHESHIRE, to wit. William Doxy complains of Martha Purley being, &c.; for that the said M. contriving and maliciously intending to aggrieve and injure the said William, and to deprive him of the comfort, company, and fellowship of the then and now wife of him the said William, and of her aid and assistance in his domestic affairs and business heretofore, to wit, on the first of November A. D. 1787, and from thence daily until the thirtieth of that month, at Frodsham, in the said county, wrongfully and injuriously enticed, instigated, and persuaded the said wife of the said William unlawfully, and without the leave or licence, and against the will of the said William, to depart, absent, and separate herself from the said William, and from the dwelling-house of the said William, and to continue so unlawfully absent, separate, and apart from the said William her husband, and without his leave, and against his consent; by means of which said unlawful enticement, instigation, and persuasion of the said M. the said wife of the said William, afterwards, to wit, on the day and year last aforesaid, at F. aforesaid, without the leave or licence, and against the will of the said William, departed, absent-
ed,

ed, and separated herself from the said William, and from the dwelling-house of the said William, and hath from thence hitherto continued so unlawfully absent, separate, and apart from the said William her husband, without his leave, and against his consent, whereby the said William during all that time hath wholly lost and been deprived of the comfort, company, and fellowship of his said wife, and of her aid and assistance in his domestic affairs and business, which he, during all that time, ought to have had and enjoyed, and otherwise might and would have had and enjoyed with his said wife, to wit, at F. aforesaid: And whereas heretofore, to wit, on the said thirtieth of November, in the year aforesaid, at F. aforesaid, the then and now wife of the said William unlawfully, and without the licence or consent, and against the will of the said William departed and absented herself from the said William; and afterwards, to wit, on the same day and year, there went and came to the said M.; yet the said M. then and there well knowing the premises last aforesaid, but contriving and maliciously intending to aggrieve and injure the said William, and to deprive him of the comfort, company, and fellowship of his said wife, and of her aid and assistance in his domestic affairs and business, then and there unlawfully harboured and received the said wife of the said William, and hath from thence hitherto wholly refused to restore her to the said William (although the said M. afterwards, to wit, on the day and year last aforesaid, and often since, at F. aforesaid, was requested so to do by the said William); but the said M. hath wrongfully and injuriously secreted, harboured, and entertained the said wife of the said William from the said W. her husband; and during all the time last aforesaid hath wholly lost and been deprived of the comfort, company, and fellowship of his said wife, and of her aid and assistance in his domestic affairs and business, which he, during all that time, ought to have had, and otherwise might and would have had and enjoyed with his said wife, to wit, at F. aforesaid, to the said William his damage of two hundred pounds, and therefore he brings suit, &c. Pledges, &c.

S. MARRYAT.

Mr. Marryat being requested to advise what proofs would be requisite in this action, and whether, in case of a one shilling verdict, the plaintiff would be entitled to costs without the judge's certificate, subjoined the following opinion:

The proper evidence in support of this action, in case it should go to the assizes, will be, first, the actual marriage of the plaintiff and his wife, by an examined copy of the register, or the parol testimony of some person acquainted with them, who was present at its solemnization; secondly, any instances of persuasion on the part of the defendant to induce the plaintiff's wife to leave him, if such can be proved; if not, the

plaintiff must resort to the second Count in the declaration, and prove that his wife having left his house, and being at the defendant's, he demanded her from the defendant, but the defendant refused to restore, and detained her against his consent, which will supply the proof of direct persuasion; and together with the evidence of marriage, be sufficient to entitle the plaintiff to a verdict in the cause. I should, however, observe, that the wife's declarations (which Mr. H. seems to rely a good deal upon in his letter) will be no evidence against the defendant. After establishing the above preliminaries at the trial, the plaintiff may proceed to shew in aggravation

of damages, that he and his wife lived happily together previous to this separation, and the importance of her assistance to him in his family and business. A

certificate from the judge, in case of a verdict for less than forty shillings, will not be necessary, as the smallest damages will carry costs. S. MARRYAT.

Declaration, plaintiff was the printer of a certain edition of the Bible, to which there were many subscribers, and defendant (who was employed by plaintiff to distribute the work) to hinder the sale of the work, caused a number of hand bills to be distributed among the subscribers, informing them that the work would never be completed, whereby a number of them withdrew their subscriptions.

(1) "in numbers then and there printing and publishing by him the said John, and"
(2) "same"
(3) "and divers persons had"
(4) "last-mentioned"
(5) "therein with all diligence, and intended to go on with and complete the same"

(6) "last aforesaid"

(7) "said last-mentioned"

NORTHUMBERLAND, to wit. John Harrison complains of Robert Garner; for that whereas the said John heretofore, to wit, on, &c. and at the time of committing the grievance hereafter next mentioned, was the printer and publisher of a certain edition of the Holy Bible, with annotations and practical observations on the chapters, then printing and publishing by him the said John, at, &c. in, &c. and which said publication he the said John had theretofore advertised to the public, and engaged to publish and deliver out in divers, to wit, ninety-two numbers, and the said John was also then and there the printer and publisher (1) of certain plates or prints to accompany the (2) said work, and had engaged to publish some of the said prints or plates at the sum or price of twopence each, and the residue thereof at the sum or price of one penny each: And whereas the said John having engaged in such publications as aforesaid, a great number of persons in and about Newcastle, &c. and the neighbourhood or vicinities thereof (3), became and were subscribers to the said (4) publications, and intended to take and purchase the same: And whereas at the time of the committing of the grievance hereafter next mentioned, the said Robert was engaged and employed by the said John to deliver out and distribute the said publications to and amongst divers, to wit, two hundred and fifty of the said subscribers: And whereas the said John, at the time of committing of the grievance hereafter next mentioned, was possessed of a sufficient number of plates to print the said prints so intended to be sold at twopence each as aforesaid, and the plates from whence the said prints so intended to be sold for one penny each, were by no means worn out or damaged, but were perfect and in good condition, and divers numbers of the said edition of the Bible so published by the said John as aforesaid had been and were published, and the said John was proceeding (5) in the publication of the residue of the said work with the greatest diligence, and there was no reason whatever to suppose or apprehend but what the same would be gone on with and completed by him, nor had he the said John, at any time before the committing of the grievance hereafter next mentioned, either by hand bills or otherwise, imputed any delay that might have happened in the course of the said publications to the distribution thereof, to wit, at, &c.; yet the said Robert, well knowing all and singular the premises (6) aforesaid, but, &c. the said John, and to cause the subscribers to the aforesaid (7) publications to withdraw their subscriptions, and to cease and to take in and purchase the same, and to put a total stop to the sale thereof heretofore, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting of the bill of the said John at, &c. and also at, &c. did falsely and maliciously assert, declare, publish, and report not only to and amongst such of the said subscribers

scribers as he the said Robert was engaged to distribute (8) the said (8) "to" publications to as aforesaid, but also to divers other subscribers to the said publication, as well to and amongst the inhabitants of the said towns at large (9), to the effect following (10), that the said (9) "and a great many other persons" publication would (11) never be completed (12) by the said John; and in order more effectually to persuade and induce the said (10) "to wit," subscribers and other persons to believe the said assertion and report (11) "not" of the said Robert, and to cause the said subscribers to cease to take (12) "or gone on with" in the said publication, and the several other persons not to purchase the same, did heretofore, to wit, on, &c. wrongfully and maliciously print and publish, and cause and procure to be printed and published, and did also on these several days and times wrongfully and maliciously deliver out, distribute, and disperse, and caused and procured to be delivered out, distributed, &c. in the said several towns of, &c. publicly and at large, divers, to wit, two thousand false, scandalous, malicious, and injurious hand bills or advertisements to the public of and concerning the said John and the aforesaid publication, containing (amongst other things) to the tenor and effect following, to wit, [here recite the hand bill]; whereby and by reason of which said several (13) grievances and promises, certain persons, to wit, (13) "last mentioned" John Curley, &c. and divers, to wit, five hundred more, who were subscribers to the said (14) publications of the said John, (14) "last mentioned" from thenceforth ceased and discontinued to subscribe to, and to take in and purchase the said (15) publications (which were afterwards (15) "last mentioned" continued and gone on with by the said John), and many other persons who would have become subscribers to and would have purchased and taken in the said (16) publication, giving credit to (16) "last mentioned" the aforesaid assertions and report of the said Robert respecting the same, and their not being completed and gone on with, declined to subscribe or take in or purchase the said (17) publications, or any (17) "last mentioned" part thereof, and the sale of the same was almost wholly stopt; whereby he the said John not only lost and was deprived of all profit, benefit, and advantage which would have arisen and accrued to him from the said subscribers continuing to subscribe and take in the said (18) publications, and from such further subscrip- (18) "last mentioned" tions to the same as aforesaid, but a large quantity of the numbers of the said (19) Bible so being published as aforesaid, and many (19) "last mentioned" of the aforesaid (20) plates or prints to the same (which he the said John had printed in contemplation of a continuance of the (20) "said last mentioned" said subscriptions so withdrawn as (21) aforesaid, and of the sale of (21) "last mentioned" the said (22) publication being so increased as aforesaid) were left (22) "last mentioned" upon the hands of him the said John, and became entirely useless, and he the said John was also, on occasion, and by reason and means of the several grievances and premises (23) aforesaid, great- (23) "last mentioned" ly hurt, injured, and prejudiced in his credit, trade, and business, to wit, at, &c.: And whereas the said John, &c. &c. [Go on 2d Count with the second Count same as the first, omitting what is in Italic, and inserting what is in the margin.] Damages one thousand pounds.

V. LAWES.

E c 3

LONDON,

Case for enticing
journeymen p. per
manufacturers
to conspire to
strike for an ad-
vance of wages.

LONDON, to wit. William Phipps complains of Anthony Burges being, &c.; for that whereas the said William, for divers years before the committing of the several grievances as by the said Anthony in the two first Counts of this declaration specified, hath been and still is a manufacturer of blue and brown paper, and hath during all that time kept, and still keeps a certain mill for the manufacture of such paper, situate at River, in the county of Kent: And whereas one Michael Keeping, one H. B. one Joseph K. one L. E. one, &c. &c. &c. before and at the time of the committing of the said several grievances, had been and were journeymen, and each of them was a journeyman of the said William Phipps retained by him in his service at certain wages, and employed in different capacities in carrying on his said manufacture in his said mill: And whereas before and at the time of the committing of the grievance by the said Anthony in the first Count of this declaration specified, there had been and were certain other paper mills respectively situate as well at Halley and Maidstone, in the county of K. as elsewhere, and before the committing of the said last-mentioned grievance, divers journeymen employed at such last-mentioned mills had conspired and combined together to exact an advance to their usual and accustomed wages from their respective masters or employers, to wit, at London aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap; yet the said Anthony, well knowing the premises, but contriving and intending to instigate and incite the said several journeymen of the said William Phipps to conspire and combine together for the purpose of exacting from him an advance to their respective wages, and thereby oblige the said William Phipps to pay such advance, or otherwise to deprive him of the service of his said journeymen, and of the means of working his said mill, and carrying on his said manufacture, and of all profit and advantage thereof, and to injure and impoverish the said William Phipps heretofore, to wit, on the thirtieth of January A. D. 1789, at L. &c. aforesaid, wrongfully and maliciously wrote, and caused and procured to be written a certain letter addressed to the "Journemen Paper-makers at Mr. Phipps, at River, near Dover, Kent" (meaning such journeymen of the said William Phipps as aforesaid), containing (amongst other things) the matter following, that is to say, "This (meaning the said letter) comes from a well-wisher to the paper trade, and to acquaint you journeymen of this mill (meaning the journeymen employed by the said William P. at his said mill as aforesaid) that Halley-men in the blue and brown way have got their wages advanced to one shilling and sixpence per man a week (meaning that the several journeymen employed at the said mill at Halley, in the manufacture of blue and brown paper, had, by means of the before-mentioned combination, obtained an advance of one shilling and sixpence per week to their respective wages.) Last week was the first time of receiving, as the matter (meaning the master of the said last-mentioned mill) has been generous enough to comply with the journeymen's demands (meaning

(meaning the demands of the said last-mentioned journeymen): now I (meaning himself the said Anthony) think, as a person that send this letter, to acquaint you (again meaning the said journeymen of the said William P.) of this good news, that you (again meaning the said journeymen of the said William P.) will *exert* yourselves to get the same wages (meaning exert themselves to obtain such advanced wages) as their master (meaning the master of the said mill at Halley) gives. As this is the only blue mill that has advanced their wages (meaning that the said last-mentioned mill was the only mill for the manufacture of blue paper where the journeymen employed had obtained an advance of wages) don't let the man (again meaning the said master of the said last-mentioned mill) that has been so generous give more than the rest of the masters in his line. If the master (meaning the said William P.) don't like to give you (again meaning the said journeymen of the said William P.) the demands as under (meaning as in the said letter, and hereinafter specified) give him (again meaning the said William P.) one fortnight's warning, and make your complaint to Maidstone and the rest of the mills (meaning that the said journeymen of the said William P. should apply to the journeymen employed at the before-mentioned mills at Maidstone and elsewhere, who had been engaged in the before-mentioned combination), and they (meaning the said last-mentioned journeymen) will support you (again meaning the said journeymen of the said William P.) by subscription, till he (again meaning the said William P.) will think proper to give it (meaning such advance of wages as aforesaid), if you (again meaning the said journeymen of the said William P.) give proper warning, and stand to your stuff like men (meaning if they would strenuously adhere to such proposed combination). This account as under is what the Halley paper-makers (meaning the journeymen employed at the said mill at Halley) have, that you (again meaning the said journeymen of the said William P.) are to stand out for and to put it (meaning the said proposed combination) into execution immediately. Vatman thirteen shillings and sixpence, coucher, twelve shillings and sixpence, layer twelve shillings, dry worker twelve shillings, beating the stuff, fourteen shillings and sixpence. Send an answer to the Black Boy, St. Mary Cray, what you (again meaning the said journeymen of the said William P.) intend doing in the matter (meaning the matter of such proposed combination). Direct it to the journeymen paper-makers at Mrs. Holises, at the Black Boy, Saint Mary Cray, Kent." And the said letter of the said Anthony afterwards, to wit, on the day and year last aforesaid, at L. &c. aforesaid, wrongfully and maliciously sent, and caused and procured to be sent and delivered to the said journeymen of the said William P.; by means and in consequence † of which said letter last-mentioned "instigation and incitement," the said M. K. &c. &c. &c. so then and there being the journeymen and hired servants of the said William P.

The plaintiff's two other journeymen, A. and

W. who are mentioned in the inducement, did not leave him.

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retained

retained and employed by him as aforesaid, afterwards, to wit, on the “said” fourteenth of February A. D. aforesaid, at L. &c. aforesaid, conspired and combined together to exact from the said William P. an “such advance as last aforesaid” to their “accustomed *respective wages respectively*, and for that purpose agreed to strike their work, and leave the employment of the said William Phipps, unless he the said William Phipps would consent to allow them such advance, and in pursuance of their said “last-mentioned” conspiracy, combination, and agreement afterwards, to wit, on the “said” twenty-eighth of February A. D. aforesaid, at L. &c. aforesaid, refused, and each and every of them refused to work any longer for the said William Phipps at their accustomed wages, and actually quitted and left the service and employment of the said William Phipps, and continued absent therefrom for a long space of time, to wit, the space of six weeks then next following, whereby the said William P. during all that time, wholly lost and was deprived of the service of the said M. K. &c. &c. &c. and of the means of working his said mill, and carrying on his said manufacture, and of all profit and advantage thereof, and is otherwise greatly injured and impoverished, to wit, at L. &c. aforesaid: And whereas the said W. P. so being such paper-manufacturer, and so keeping such mill as aforesaid, and the said M. K. &c. &c. J. A. &c. and W. being such journeymen retained and employed by the said W. P. as aforesaid; yet the said Anthony, well knowing the premises last aforesaid, but contriving and intending to oblige the said W. P. to pay a certain advance, that is to say, an advance of one shilling and sixpence per week to the respective wages of his said several journeymen, or otherwise to deprive him of their service, and of the means of working his said mill, and carrying on his said manufacture, and of all profit and advantage thereof, and to injure and impoverish the said W. P. heretofore, to wit, on the said thirtieth of January A. D. aforesaid, at L. &c. wrongfully and maliciously instigated and incited the said several journeymen of the said W. P. to conspire and combine together for the purpose of exacting from the said W. P. such advance of one shilling and sixpence a week to their accustomed wages respectively; by means and in consequence, &c. [as in the first Count from this mark † with the alterations by omitting the words in *Italic*, and the words contained within inverted commas: And whereas before and at the time of the committing of the grievance hereinafter mentioned, the said William Phipps was a paper-manufacturer, and the said Michael Keeping, &c. [naming all the others who left the plaintiff’s service] were the hired servants, and each of them was the hired servant of the said W. P. retained and employed by him in carrying on his said manufacture, to wit, at L. &c. aforesaid; yet the said Anthony, well knowing the premises last aforesaid, but contriving and intending to deprive the said W. P. of the service of his said last-mentioned servants, and of the means of carrying on his said manufacture, and of all profit and advantage

2d Count.

3d Count.

advantage thereof, and to injure and to impoverish the said W. P. heretofore, to wit, on the day and year last aforesaid, at L. &c. aforesaid, wrongfully and maliciously instigated, excited, and persuaded the said M. K. &c. [naming those who left the plaintiff] so then being such hired servants of the said W. P. retained and employed by him as aforesaid, to depart and absent themselves respectively from the service of the said William P.; by means and in consequence of which said last-mentioned instigation, incitement, and persuasion the said M. K. &c. without the licence and consent of the said William P. then and there wholly departed and absented themselves, and each of them departed and absented himself from the said service and employment of the said W. P. and continued absent therefrom for a long space of time, to wit, the space of six weeks then next following; whereby the said W. P. during all that time wholly lost and was deprived of their service, and of the means of carrying on his said manufacture, and of all right and advantage thereof, and is otherwise greatly injured and impoverished, to wit, at L. &c. aforesaid, to the damage of the said W. P. of three hundred pounds; and therefore he brings suit, &c. Pledges, &c. S. MARRYAT.

HYNSON } **HAMPSHIRE**, to wit. Joseph Hynson com- Declaration a-
against } plains of Rob. Jordison, being, &c.; for that whereas gainst defend-
JORDISON. } before and at the time of the injury and grievance ant, for moor-
next hereinafter mentioned, to wit, on the twenty-sixth of ing his ship so
November 1787, the said Joseph was and still is possessed of close to the ship
and in a certain ship or vessel called the Apollo, as of his own of plaintiff in a
ship or vessel, and which said ship or vessel was then floating or plaintiff's ship
lying at anchor in the port or harbour of Southampton, otherwise was squeezed
the county of the town of Southampton, otherwise the town and between the
county of the town of Southampton, near to the quay of the said ship of defendant
harbour or port, into and from which said port or harbour and the harbour,
waters and tides of the sea have for divers, to wit, ten years past, and when the
usually flowed and reflowed, and still do usually flow and reflow, tide came in fell
and which said ship or vessel of the said Joseph, during the time down and was
that the water and tide flowed into and filled the said harbour or bulged.
port, then and there floated and was born up and buoyed by the said
tide or water, and when the said water and tide reflowed from and
out of the said port or harbour the said ship or vessel of the said J.
then and there remained and rested upon the mud at the bottom of
the said port or harbour, to wit, at anchor in the said county
of Hants: And whereas the said ship or vessel of the said Joseph a
little before and at the time of the injury and grievance hereinafter
next-mentioned, was floating, and buoyed, and borne up by the
tide or water flowing into the said port or harbour, to wit, at an-
chor aforesaid, in the said county of Hants; and whereas also the
said Robert, on the same day and year aforesaid, was possessed of a cer-
tain ship or vessel called the Kitty, then also lying and being in the
said port or harbour, of which said last-mentioned ship or vessel he
the

the said Robert then and there had the government, navigation, direction, and care, to wit, at, &c. and the said Robert having the said governance, navigation, direction, and care of the said last-mentioned ship or vessel afterwards, to wit, on, &c. at, &c. so negligently, carelessly, and unskilfully steered, governed, navigated, and directed the said ship or vessel of him the said Robert, that the said last-mentioned ship or vessel by and through the negligent, careless, and unskilful steering, navigating, and directing of the same last-mentioned ship by the said Robert, then and there came and lay so near, and close to, and against the said ship or vessel of the said Joseph, that the said ship or vessel of the said Joseph was thereby forced and confined so close to and against the quay of the aforesaid port or harbour, that by reason thereof, afterwards, and when the said tide or water reflowed from and out of the said port or harbour, to wit, on the same day and year aforesaid, the said ship or vessel of the said Joseph on one side thereof hung and rested on the said ship or vessel of the said Robert by the chains of the said ship or vessel of the said Joseph, and the said ship or vessel of the said Joseph on the other side thereof hung and rested upon the quay of the said port or harbour by the chains of the said ship or vessel of the said Joseph, and was thereby suspended, and remained and continued so for a long space of time, to wit, for the space of one hour, and was thereby prevented and hindered from lowering, resting, and lying upon the bottom of the said port or harbour after the said tide or water so reflowed as aforesaid, which it therwise would have done if not suspended as aforesaid, and by reason thereof the said ship or vessel of the said Joseph afterwards, to wit, on the same day and year aforesaid, fell and tumbled down to the bottom of the said port or harbour by the said chains of the said ship or vessel of the said Joseph breaking and giving way, and by reason thereof the said ship or vessel of the said Joseph became and was greatly strained, bulged, shook, and weakened in the hull thereof, and the masts, rigging, tackle, furniture, and apparel of the said ship or vessel of the said Joseph, and thereby became very much damaged, injured, and prejudiced, insomuch that the said ship or vessel of the said Joseph became and was of little or no use or value to the said Joseph, but the said Joseph was forced and obliged to lay out and expend, and did actually lay out and expend a large sum of money, to wit, the sum of five hundred pounds of lawful money of Great Britain, in and about the repairing and refitting the said ship or vessel of the said Joseph, to wit, at and over aforesaid, in the said county: And whereas also afterwards, to wit, on the day and year aforesaid, he the said Joseph was possessed of a certain other ship or vessel called the Apollo, then lying and being in the said port or harbour near to the quay of the said port or harbour, to wit, at and over aforesaid, in the said county of Hants, unto, into, and from which said port or harbour the waters and tides of the sea have for divers, to wit, ten years past, usually flowed and reflowed, and still do usually flow and reflow, and which said last-mentioned ship or vessel was then

then floating in the water there : And whereas also the said Robert was then, to wit, on the same day and year aforesaid, possessed of a certain other ship or vessel called the Kitty, then also lying and being at the port or harbour aforesaid, of which said last-mentioned ship or vessel he the said Robert then and there had the governance, navigating, direction, and care, to wit, at and over aforesaid, in the said county of Hants; and the said Robert, having the said governance, navigating, direction, and care of the said last-mentioned ship or vessel, afterwards, to wit, on the same day and year aforesaid, and whilst the said last-mentioned ship of the said Joseph was floating on the water of the said port or harbour, so negligently, carelessly, and unskilfully steered, governed, navigated, and directed the said last-mentioned ship or vessel of the said Robert, that the said last-mentioned ship or vessel of the said Robert, by and through the negligent, careless, and unskilful steering of the same, came and lay so near and close to and against the said last-mentioned ship or vessel of the said Joseph, that the said last-mentioned ship or vessel of the said Joseph was thereby forced and confined so close and against the quay of the said port or harbour, that the said last-mentioned ship or vessel of the said Joseph was thereby pressed and squeezed between the said quay of the said port or harbour and the said last-mentioned ship or vessel of the said Robert, and by means thereof, when the tide and water had flowed from and out of the said port or harbour where the said last-mentioned ship or vessel of the said Joseph was so confined as aforesaid, the said last-mentioned ship or vessel of the said Joseph became and was suspended and hung up between the said last-mentioned ship or vessel of the said Robert and the quay of the said port or harbour, and remained and continued so suspended and hung up until afterwards, to wit, on the day and year aforesaid, the said last-mentioned ship or vessel of the said Joseph gave way, fell, and tumbled down to the bottom of the aforesaid port or harbour, which it would not have done if not hung up and suspended as last aforesaid, and by reason thereof the said last-mentioned ship or vessel of the said Joseph not only became and was greatly strained, bulged, shook, and weakened in the hull thereof, and the masts, rigging, tackle, furniture, and apparel of the said last mentioned ship or vessel, that the said last-mentioned ship or vessel of the said Joseph thereby became and was very much damaged, injured, and prejudiced, insomuch that the said ship or vessel of the said Joseph last-mentioned became and was of little or no use or value to the said Joseph, and the said Joseph was forced and obliged to lay out and expend, and did actually lay out and expend a large sum of money, to wit, the sum of five hundred pounds, of like lawful money, in and about the repairing and refitting the said last-mentioned ship or vessel of the said Joseph, &c. to wit, at, &c.; to the damage, &c. Pledges, &c.

J. BURROUGH.

Defendant being part owner of a ship with plaintiff's ship lying at anchor at, &c. was to be freighted to L. defendant caused the master to deviate from his intended voyage, and to carry him to V. ship in return was lost.

FOR that whereas on, &c. the said plaintiffs, together with the said defendants, were owners of a certain ship or vessel called, &c. whereof one Cornell was then master, to wit, at, &c. and which said ship had been before then sent and consigned to the said defendant from the port of London in Great Britain to the island of Saint C. by the said plaintiffs by the consent and direction of the said defendant, in order to be loaded there, to wit, at the island of St. C. aforesaid, with goods, &c. on freight for the said port of London, and then to be dispatched, and to sail with such goods, &c. so laden on board her on freight from the island of Saint C. to the said port of L. and the said ship was then lying at anchor at the said island of Saint C. to wit, at, &c. in the said island, and was then bound on the said intended voyage from thence to the port of L. to carry in her such goods, &c. on freight whereby the said plaintiffs would have gained and acquired to themselves divers large sums of money for the freight of those goods, &c.; yet the said defendant, well knowing all and singular the said premises, but contriving, &c. the said plaintiffs in this behalf, and to deprive them of the profits of the said then intended voyage of the said ship while the said ship so lay at anchor at the island of Saint C. aforesaid, to wit, on, &c. went and came on board the said ship without the consent and against the will of the said plaintiffs, or any of them, and unlawfully and unjustly persuaded, procured, directed, required, and enticed the said Connell to deviate from his said intended voyage, and to carry, transport, and convey the said defendant in the said ship from the said island of Saint C. aforesaid to Virginia, in America, by means and pretence of which said persuasion, procuration, direction, request, and enticement, he the said Connell afterwards, to wit, on, &c. deviated from his said intended voyage, and carried, transported, and conveyed the said defendant in the said ship from the island of Saint C. aforesaid to Virginia, in America; by means whereof the said plaintiffs not only lost the whole profits of the said ship's intended voyage to the port of L. aforesaid, and of her carrying the said goods, &c. on freight to the said port of L. but also the said ship was after her arrival at Virginia aforesaid, and before she got back from thence to the said island of Saint C. and before her arrival at the port of L. aforesaid, to wit, on, &c. totally lost, and never after her said departure from the island of Saint C. aforesaid, came to the use or possession of the said plaintiffs, or any of them; to the said plaintiffs their damage of one thousand pounds, &c.

Drawn by Mr. WARREN.

Declaration against defendant for throwing rubbish in the street, whereby plaintiff's wife and son were turned over in a cart and wounded.

PALACE COURT, to wit. Evan Evans and Ann his wife, by William Railton their attorney, complain against Richard Baggelly in, &c.; for that whereas he the said Richard heretofore, to wit, on, &c. and within the jurisdiction of this court, wrongfully and unlawfully caused and procured to be put, placed, cast, and thrown, and so kept and continued in and upon a certain public

public street or common king's highway there called Butcher Row, divers large quantities of rubbish in obstruction of the said highway, and whereby a certain cart, in which Ann the wife, and servant of the said Evan, and one J. E. the son and servant of the said Evan, during the said obstruction and nuisance, to wit, on, &c. in the night-time of that day, at, &c. unavoidably, and without any negligence or default in the driving of the said cart, ran foul of, and upon, and against the said rubbish so there put, placed, and being as aforesaid, whereby the said cart was then and there unavoidably cast, flung, thrown down, and turned over, and the said Ann and the said J. E. were thereby then and there thrown and fell out of the said cart to and upon the ground, and were thereby respectively cut, bruised, and wounded, whereby they then and there respectively became sick, sore, and disordered, and also remained and continued for a long space of time, whereby the said Evan, during all that time, lost and was deprived of the services and assistance of his said wife and son, and was forced and obliged to lay out and expend a large sum of money in and about their cure, to wit, at, &c. [Add a second Count.]

V. LAWES.

J. C. } FOR that whereas on, &c. at, &c. by a certain in-
against } denture [here set out the lease, to the end of the *redden-*
C. B. } *dum*], and by a certain memorandum or agreement in-
dorsed upon the said indenture, and subscribed with the proper
hand of the said defendant, at the time of his sealing and delivering
the said indenture, it was agreed by and between the said plaintiff
and the said defendant, that the said plaintiff, his executors, or
administrators, should, during the continuance of the term by the
said indenture demised, hold and retain half a year's rent in hand,
as by the said indenture and memorandum, reference being there-
unto had, will more fully and at large appear; by virtue of which
said demise the said plaintiff afterwards, to wit, on, &c. entered
into the said demised premises, with the appurtenances, and be-
came, and from thence hitherto hath been, and still is thereof
lawfully possessed for the said term to him thereof granted as afore-
said, and during all that time hath held the said demised premises
of the said defendant as his tenant thereof by virtue of the said
demise and agreement, and by or under no other demise, tenure,
or holding whatsoever; and the said plaintiff being so thereof pos-
sessed, he the said defendant, by one A. B. his agent in that be-
half, afterwards, to wit, on, &c. with force and arms, took,
seized, and distrained in and upon the said demised premises
(amongst other things), divers goods and chattels of the said plain-
tiff, to wit, three cows, &c. &c. then and there found and being of
great value, to wit, of the value of one hundred and fifty pounds
of lawful money of Great Britain, and afterwards, to wit, on, &c.
sold the said goods and chattels, being of such value as aforesaid,

Declaration by
tenant against
his landlord for
distraining when
no rent was due,
to recover dou-
ble the value of
the goods dis-
trained.

2. W. & M. c.
5. s. 5.

by force of the statute in such case made and provided for rent pretended to be in arrear and due to the said defendant for the said demised premises, to wit, for one half year's rent pretended to be due and in arrear to the said defendant, whereas in truth there was no rent in arrear and due from the said plaintiff to the said defendant contrary to the form of the statute in that case made and provided; to the damage, &c.

G. WOOD.

Declaration for distraining beasts of the plough and sheep, although there were sufficient goods and chattels on the premises.

2d Count.

3d Count.

CORNWALL, to wit. J. N. complains of P. N. T. S. T. S. J. C. being, &c.; for that the said defendants, on, &c. at, &c. in, &c. took and distrained the beasts of the plough and sheep of the said plaintiff, to wit, one bay mare, twenty-five sheep, two brown steers, two heifers, and one cow, then being upon a certain tenement of the said plaintiff, situate and being in the parish aforesaid, not for damage feasant, but for certain rent then supposed to be due and owing from the said plaintiff to the said P. N. for and in respect of the said tenement, although there were then and there goods and chattels of the said John in and upon the tenement aforesaid sufficient for a reasonable distress for the rent aforesaid, and afterwards, to wit, on, &c. at &c. in, &c. the said defendants sold the said beasts of the plough and the said sheep of the said J. N. and the money coming and arising from the sale thereof converted and disposed to their own use, contrary to the form of the statute in such case made and provided, and against the peace of our said lord the now king: And whereas, &c. [2d Count same as first, only saying there were two tenements]: And also for that whereas the said J. N. on, &c. and for divers, to wit, two years, then last past, held a certain other tenement, with the appurtenances, situate and being in the parish aforesaid, as tenant thereof to the said P. N. under and by virtue of a certain demise thereof by the said P. N. to the said J. N. made for a term of years, which is not yet expired, under the yearly rent of forty-eight pounds, of which rent there was then due and in arrear to the said P. N. from the said John the sum of seventy-nine pounds, and no more; yet the said defendants, well knowing the premises last aforesaid, but contriving and wrongfully and injuriously intending to injure the said plaintiff, and not regarding the statute in such case made and provided, on, &c. at, &c. in, &c. took and distrained divers cattle, goods, and chattels, of the said plaintiff, of a much greater value than the arrears of the said rent, to wit, of the value of two hundred pounds, in and upon the last-mentioned tenement for the said arrears of rent, and thereby took a great and unreasonable distress for the said arrears of rent, contrary to the form of the statute in such case made and provided, and against the peace of our said lord the now king, and to the damage of the said plaintiff of two hundred pounds, &c.

F. BULLER.

LICARLET

LICARLET } **FOR** that whereas by a certain act of parliament
against } made and passed in the parliament of our sovereign
JOHNSON. } lord George the Third, now king of Great Britain,
 &c. at a session thereof holden at Westminster, in the county of
 Middlesex, in the sixteenth year of his reign, intituled, "An act
 for vesting in John Licarlet, clerk, his executors, administrators,
 and assigns, the sole use and property of a certain composition or
 cement of his invention throughout his majesty's kingdom of
 Great Britain, and in the colonies and plantations abroad, for a
 limited time," reciting, amongst other things, that his most ex-
 cellent majesty king George the Third, by his letters patent under
 the great seal of Great Britain, bearing date at Westminster, the
 third day of April, which was in the thirteenth year of his reign,
 did give and grant to the said J. L. of, &c. his executors, admin-
 istrators, and assigns, his sole privilege and authority to make,
 use, exercise, and vend a certain composition or cement for all
 the branches concerning buildings, to which the same was appli-
 cable within that part of Great Britain called England, his do-
 minion of Wales, and the town of Berwick upon Tweed, and in
 any of his majesty's colonies and plantations abroad, for the term
 of fourteen years, the sole privilege and advantage of making,
 using, exercising, and vending the said composition or cement
 mentioned in the said letters patent, with the additions and im-
 provements after the granting of the said letters patent, and after
 the passing of the said act made therein within the kingdom of
 Great Britain and his majesties colonies and plantations abroad
 from and after the passing of the said act was, and by the said act
 were declared to be velled in him the said plaintiff, his executors,
 administrators, and assigns, for and during the term of eighteen
 years from thenceforth next ensuing, and fully to be complete and
 ended: And the said plaintiff further saith, that in pursuance of
 the said act of parliament, he the said plaintiff did particularly as-
 certain and describe the nature of his invention in its improved
 state at the time of the passing of the said act, and in what manner
 by which the same was to be performed, by an instrument in
 writing under his hand and seal, and caused the same to be inrolled
 in the high court of chancery within four calendar months after
 the passing of the said act, to wit, at, &c. in, &c.; yet the said
 defendant, well knowing the premises, but contriving and frau-
 dulently and maliciously intending to hurt, injure, and prejudice
 the said plaintiff, and to deprive him of the profit and benefit of
 the said sole privilege of making, using, and exercising the said
 composition or cement mentioned in the said letters patent, with
 the additions and improvements made therein, vested in him by
 the said act of parliament, after the passing of the said act, and
 during the term of eighteen years therein mentioned, to wit, on,
 &c. and on divers other days and times between that day and the
 day of exhibiting of the bill of the said plaintiff, at, &c. in, &c.
 unlawfully and unjustly, and without the licence, consent, or
 agreement of the said plaintiff in writing under his hand and seal
 first

Declaration a-
 gainst defendants
 for using a ce-
 ment or compo-
 sition which had
 been granted to
 the plaintiff by
 letters patent,
 without the
 plaintiff's leave.

2d Count.

3d Count.

first had and obtained in that behalf, did unlawfully make, use, and put in practice the said invention of the said plaintiff, to wit, at, &c. and thereby prevented and hindered the said plaintiff from having and enjoying the whole profit and benefit thereof, and deprived him of great gain and advantage which would have arisen therefrom, contrary to the form of the said act of parliament: And the said plaintiff further saith, that the said defendant, again contriving and fraudulently and maliciously intending as aforesaid, after the passing of the said act of parliament, and during the said term of eighteen years therein mentioned, to wit, on, &c. [same as first Count from hence, only instead of the words "put in practice the said invention" say "put in practice part of the said invention," and omitting the word "unlawfully"]: And, &c. &c. [3d Count same as 2d Count, only instead of the words "did make, use, and put in practice," say "did counterfeit, imitate, and resemble."] [4th Count same as second, only instead of the words "make use of and put in practice" say "did make and cause to be made additions unto the said invention of the said plaintiff, thereby to pretend himself the inventor, and the defendant did thereby pretend himself to be the inventor thereof," and then add "whereby the said plaintiff was greatly prevented and injured in the profit and benefit of his invention of, &c." [as before.] [5th Count same as before, only instead of the words "make use of and put in practice" say "did make and cause to be made subtractions from the said invention of the said plaintiff, whereby to pretend himself the inventor thereof; *per quod*, &c.]

J. WALLACE:

Plaintiff obtained a verdict. Sittings after Hilary, 18. Geo. III. at Westminster.

Declaration for
rescuing one A.
B. who was in-
debted to the
plaintiff, and
was in the cus-
tody of the
bailliff.

TOWN AND COUNTY OF THE TOWN OF KING-
STON UPON HULL; to wit. Francis Hardy complains of
Michael Metcalfe, being, &c.; for that whereas one C. on the
eighteenth of June 1777, at, &c. was and still is indebted to the
said Francis in a large sum of money, to wit, in the sum of two
hundred pounds, upon and by virtue of his certain writing-ob-
ligatory, sealed with the seal of the said C. bearing date the four-
teenth of July 1775: And whereas the said F. afterwards, to
wit, on the eighteenth of June 1777, for the recovery of the said
debt, prosecuted out of the court of our said lord the king, before
the king himself, the said court then and still being at Westmin-
ster, in the county of Middlesex, a certain writ of our said lord
the king of *latitat*, directed to the sheriff of the town and county
of the town of K. upon H. by which said writ the said lord the
king commanded the said sheriff that he should take the said C.
and one John Doe, if they should be found in his bailiwick, and
safely keep them, so that the said sheriff might have their bodies
before our said lord the king on, &c. to answer to the aforesaid F.
of a plea of trespass, and also that the said C. might answer to a bill
of

of the said F. according to the custom of the court of our said lord the king to be exhibited for two hundred pounds debt, and that the said sheriff should have there that writ, before the issuing of which said writ an affidavit of the debt and cause of action for which the said writ was so sued out by the said Francis against the said C. was in due manner made and filed, according to the form of the statute in such case made and provided, to shew the cause of action in the said writ specified, according to the custom and usage of the same court, and by the said affidavit the sum of one hundred and ninety-two pounds ten shillings was sworn to be due from the said C. to the said F. : And the said F. further says, that the said writ so indorsed as aforesaid, afterwards and before the return thereof, to wit, on, &c. at, &c. was delivered to one P. then sheriff of the said town and county aforesaid, to be executed in due form of law ; by virtue of which said writ, and for the execution thereof, the said D. then sheriff of the said town and county, afterwards and before the return of the said writ on the same day and year last-mentioned, at, &c. made his certain warrant in writing, sealed with the seal of his office of sheriff of said town and county, delivered to one E. the bailiff of the said sheriff; by which said warrant said sheriff, by virtue of his majesty's writ to him directed, commanded the said bailiff that he should take the said C. if he should be found in his bailiwick, and him safely keep, so that the said sheriff might have his body before his majesty at Westminster, on, &c. to answer to the aforesaid F. of the plea and bill aforesaid; by virtue of which said warrant he the said E. afterwards, and before the return of the said writ, to wit, on the same day and year last aforesaid, at, &c. and within the bailiwick of the said sheriff, took and arrested the said C. by his body, and had him in his custody under that arrest ; and the said C. so being in custody under the said arrest, the said M. contriving and fraudulently intending to injure the said F. in this behalf, and to deprive him of the benefit of the said arrest, and of his remedy for recovering his debt aforesaid, afterwards, and before the return of the said writ, to wit, on the same, &c. at, &c. with force and arms made an assault on the said E. then and there being bailiff of the said sheriff, and having and detaining the said C. in custody under the said arrest as aforesaid, and took and rescued the said C. so being in the custody of the said E. the said bailiff under the said arrest as aforesaid, from and out of the said arrest, and from and out of the custody of the said E. and against the will of the said E. and caused and permitted the said C. to escape and go at large whither he would (he the said F. not being then, or at any time since, paid or satisfied his debt aforesaid), so that the said sheriff could not have the body of the said C. before our said lord the king at Westminster on the day mentioned in the said writ, as he was thereby commanded ; and the said C. immediately after the said rescue made as aforesaid, secreted and concealed himself in places unknown to the said F. so that the said C. could not be

taken and arrested by any process of law, by reason whereof the said F. hath been prevented and hindered of his just remedy for the recovering his said debt against the said C. and is very likely entirely to lose the same; wherefore the said F. says that he is injured, and hath sustained damage to the value of two hundred pounds, and therefore, &c.

Drawn by MR. CROMPTON.

Declaration for engraving and publishing a mezzotinto print, copied from the original engraved by plaintiff.

LONDON, to wit. Thomas Watson complains against Robert Sayer and John Bennett being, &c.; for that whereas the said Thomas now is, and for divers, to wit, six years last past, has been an engraver in mezzotinto, to wit, at, &c. and during all the time aforesaid has engraved, and still doth engrave prints in mezzotinto for sale and profit, and during all the time aforesaid hath engraved, and still doth engrave prints in mezzotinto, and by reason thereof hath made and gotten to himself great emoluments, profits, and advantages, and a comfortable livelihood and subsistence thereby, to wit, at, &c.: And whereas before the committing the injury hereinafter next mentioned, to wit, on the first day of June 1775, to wit, at, &c. he the said Thomas had engraved for profit a certain mezzotinto fancy portrait print in the character of Elisha, with the name of the said Thomas thereto as the engraver thereof; from which said engraving divers, to wit, five hundred prints, before the committing of the injury hereafter next mentioned, to wit, on the said first of June 1775, at, &c. had been printed and published with the name of the said Thomas thereto, as the engraver thereof, and at the time of committing the injury next after mentioned, were continued to be published and sold for profit, that is to say, at, &c.; yet the said R. and John, well knowing the premises, but contriving and wrongfully and injuriously intending to injure and prejudice the said Thomas in his business of an engraver, and to cause him the said Thomas to be deemed and thought an unartificial and unskilful workman in his said business of an engraver, and to prejudice him in the good opinion of persons who would otherwise have employed him in his said business, on the first of October 1775, at, &c. wrongfully and injuriously, and without the leave and consent of the said Thomas, made and caused to be made a certain other engraving of a mezzotinto fancy portrait print in the character of Elisha, to imitate the said engraving of the said Thomas, and with the name of the said Thomas thereto as the engraver thereof, and on the same, &c. and on divers other days and times between, &c. at, &c. wrongfully and injuriously, and without the leave and consent of the said Thomas, printed and published, and caused and procured to be printed and published divers, to wit, five hundred prints from the said last-mentioned engraving, as and for prints taken from the said engraving of the said Thomas, and with the said Thomas's name affixed thereto as the engraver thereof, which said engraving and prints of the said R. and J. were much worse

worse than and inferior to the engraving of the said Thomas, and the said prints printed and published therefrom; by means whereof the said Thomas is brought into great disgrace, scandal, and discredit, and is greatly injured in his name, fame, credit, and reputation as a skilful artist and engraver, to wit, at, &c. [2d Count same as first Count to gravamen]; yet the said Robert and John, well knowing the premises last aforesaid, but further contriving and wrongfully and injuriously intending to injure the said Thomas in the business of an engraver, and to cause him the said Thomas to be thought an unartificial and unskilful workman in his said business of an engraver, and to prejudice him in the good opinion of persons who would otherwise have employed him in his said business, on the said first day of October 1775, and on divers, &c. at, &c. wrongfully and injuriously published, and caused to be published divers, to wit, five hundred other mezzotinto prints in the said character of Elisha, as and for prints taken from the said last-mentioned engraving of the said Thomas, and with his name affixed thereto as the engraver thereof, which said last-mentioned prints of the said R. and J. were much worse than and inferior to the said last-mentioned prints printed and published from the said last-mentioned print of the said Thomas; by means whereof the said Thomas is brought into great disgrace, scandal, and discredit, and is greatly injured in his name, fame, and reputation as a skilful artist and engraver, and is greatly hurt in the profits and emoluments of his said business as engraver, to wit, at, &c. to the damage, &c.

F. BULLER.

MIDDLESEX, to wit. R. N. complains of W. H. being, Declaration against defendant
&c.; for that whereas he the said R. on, &c. to wit, at the parish of, &c. in the county of Middlesex aforesaid, at the special instance and request of the said W. let to hire and delivered to the said W. a certain mare of the said R. to carry the said W. a certain journey, to wit, from the said parish, &c. in, &c. to Dartford, in the county of Kent, and from thence, &c. for a certain hire or reward to be therefore paid by the said W. to the said R. for the use and hire of the said mare; and although the said W. then and there had and received the said mare of him the said R. to ride, go, and perform the said journey as aforesaid, to wit, at, &c. aforesaid; yet the said W. contriving, &c. wrongfully to injure the said R. in this behalf, he the said W. afterwards, to wit, on the same, &c. did wrongfully and injuriously ride on, and go and travel with the said mare much farther than from the parish aforesaid to Dartford aforesaid, in the county of K. aforesaid, and from Dartford aforesaid, in the county of K. aforesaid, to the parish aforesaid, to wit, from the parish aforesaid to Gravesend, in the county of K. aforesaid, and from thence back to the parish aforesaid, being much further, to wit, thirty miles further than he ought to have went with or rode the said mare, to wit, at, &c. and

for riding a hired mare farther than agreed for, and so immoderately as to strain her fore legs.

did then and there, to wit, on, &c. so grievously and immoderately, unreasonably, inordinately, and excessively ride, work, and labour the said mare, and use the said mare in such an immoderate and unreasonable manner, and then and there took so little and such bad care of the said mare, that the said mare being of a large value, to wit, of the value of forty pounds; *by means of the riding her so much further than the journey for which he the said R. let to hire to the said W. and also by means of the aforesaid bad usage, and of the grievous, inordinate, unreasonable, and immoderate labouring and working of the said mare in manner and form aforesaid, became and was very much hurt and strained, to wit, in her fore legs and fore feet, and also by means of the premises aforesaid the said mare was and is otherwise greatly lamed, broken down, distempered, and greatly damaged and rendered unfit for use, and entirely spoiled,* to wit, at, &c.: And whereas the said R. afterwards, to wit, on, &c. at, &c. at the like special instance and request of the said W. let to hire and delivered to the said W. a certain other mare of him the said R. to go and perform a certain other journey, to wit, a journey of fifteen miles or thereabouts, from the parish of, &c. and back again to the parish aforesaid, at and for certain hire or reward to be therefore paid by the said W. to the said R. for the use and hire of the said last-mentioned mare: And the said R. in fact saith, that although the said R. then and there had and received the said last-mentioned mare of him the said R. in good condition to go and perform the said last-mentioned journey as aforesaid, to wit, at, &c.; yet the said W. contriving, &c. the said R. in this behalf, he the said W. on, &c. and before he returned the said last-mentioned mare to the said R. did wrongfully and unjustly ride on, and go and travel with the said last-mentioned mare from, &c. much farther than fifteen miles, to wit, to Gravesend aforesaid, in the county of K. aforesaid (being at a great distance from the parish aforesaid, to wit, the distance of twenty-five miles), and also to divers other places to the said R. unknown, to wit, at, &c. and from thence back again to the parish aforesaid, and did then and there, to wit, on, &c. at, &c. so grievously, &c. &c. [as in the first Count to the end, omitting what is in *Italic*]: And whereas he the said R. afterwards, to wit, on, &c. at, &c. at the like, &c. let to hire and delivered to the said W. a certain other mare of him said R. to go and perform a certain journey at and for certain hire or reward to be therefore paid by the said W. to the said R. for the use and hire of the said last-mentioned mare: And the said R. in fact saith, that although, &c. &c. [as before]; yet the said W. contriving, &c. he the said W. afterwards, and whilst he had the said last-mentioned mare for the purpose aforesaid, to wit, on, &c. and before he returned the said last-mentioned mare to the said R. did wrongfully and unjustly ride, use, work, and labour the said last-mentioned mare in an excessive, &c. manner, and then and there took so little and such bad care of the said last-mentioned mare, &c.

2d Count, a certain number of miles.

3d Count, a certain journey.

&c. &c. [as in the first Count, omitting the words in *Italic*]. Damages fifty pounds.
J. MORGAN.

LONDON, to wit. G. H. complains of W. R. being, &c.; Declaration against defendant for keeping a dog he knew to be accustomed to bite mankind, and which bit plain iff, and very much injured him, *per quod*, &c.
for that whereas the said W. R. on, &c. at, &c. knowingly and wilfully kept a certain dog called a bull-dog, which said dog was used and accustomed to bite mankind, he the said W. R. then and there well knowing that the said dog was so used and accustomed to bite mankind as aforesaid, which said dog being then the dog of the said W. R. on, &c. at, &c. did furiously seize upon and vehemently bite the said G. H. and by so seizing upon and biting him the said G. H. did so greatly tear, lacerate, mangle, and mar the face of him the said G. H. and other parts of the body of the said G. H. and otherwise so greatly hurt, injure, and wound him, that the said G. H. was not only thereby rendered in great terror and danger of his life, and lost large quantities of his blood, but the said G. H. was and is very much bruised, wounded, maimed, and disfigured in his face, and by reason of the said bites, and of the hurts, injuries, wounds, mars, and lacerations thereby occasioned, the said G. H. was and became sick and disordered, and so remained sick and disordered continually from that time until the exhibiting the bill of the said G. H. and during all that time suffered and underwent great and excruciating pains and tortures both of body and mind, and was forced to lay out and expend, and hath actually laid out and expended a large sum of money, to wit, the sum of fifty pounds of lawful money of Great Britain, in and about his endeavours to effect a cure in this behalf, and to heal the said hurts, injuries, mars, and lacerations, and hath also, during the said time, been wholly prevented and hindered from following and transacting his lawful affairs and business, and been otherwise put to great inconvenience, to wit, at, &c. Damage,
Drawn by MR. CROMPTON.

Trinity Term, 30. Geo. III.

HAMPSHIRE, to wit. Be it remembered, that in Michaelmas Term last past, before our lord the king at Westminster, came L. T. H. by John Barber his attorney, and brought into the court of our said lord the king before the king himself, then and there his certain bill against Thomas Benister being, &c. of a plea of trespass on the case, and there are pledges for the prosecution, to wit, John Doe and Richard Roe, which said bill follows in these words, to wit, Hampshire, to wit: L. T. H. complains [to the end of the declaration]: And now at this day, that is to say, on Friday next after the morrow of the Holy Trinity in this same term, until which day the said Thomas had leave to impart to the said bill, and then to answer the same, &c. before our said lord the king at Westminster, comes as well the said L. T. by

(a) Accustomed to bite mankind.

F f 3

his

his said attorney, as the said Thomas by Robert Blake his attorney, and the said T. defends the wrong and injury when, &c. and says, that he is not guilty of the premises above laid to his charge, in manner and form as the said L. T. hath above thereof complained against him; and of this he puts himself upon the country, and the said L. T. doth the like, &c.; therefore let a jury thereupon come before our lord the king at Westminster, on next after, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties aforesaid to the same place.

Declaration against defendant for enticing away plaintiff's apprentice.

DEVONSHIRE, to wit. J. B. complains of J. K. being, &c.; for that whereas one other J. K. on the first of June 1788, at B. in the said county of D. was, and from thenceforth hitherto hath been, and still is the apprentice and servant of the said plaintiff, and as such apprentice and servant then and there, to wit, on, &c. lived and resided with the said plaintiff his master; yet the said J. the now defendant, well knowing the premises aforesaid, but contriving and fraudulently and maliciously intending wrongfully to injure and damnify the said J. in this respect, and craftily and subtilly to deceive and defraud the said James in the service of his said apprentice and servant, and of great part of the profits and advantages which he might and ought to have had by reason of the apprenticeship and servitude of the said apprentice and servant, on, &c. at, &c. wrongfully, injuriously, and unjustly, and without the licence and consent, and against the will of the said James, persuaded, procured, and enticed the said J. so then and still being the apprentice and servant of the said James, to absent himself and depart from the service of the said James, to wit, at, &c.; on pretext and by means of which said persuasion, procuration, and enticement, he the said J. K. the apprentice and servant of the said J. afterwards, to wit, on, &c. at, &c. without the licence, and against the will and consent of the said plaintiff, wrongfully and injuriously departed and absented himself from the said service of the said J. and continued absent and apart from his said service for a long time, to wit, from thence hitherto, whereby the said J. hath, during all that time, wholly lost the benefit, profit, and advantage, which by reason of the service of his said apprentice he might and ought to have had and received; and otherwise should and would have received: And whereas afterwards, to wit, on, &c. at, &c. one other J. K. then, and from thence hitherto and still being a certain other apprentice and servant of the said plaintiff, unlawfully, and without the leave, and against the will of the said plaintiff, departed and went away from the service of the said plaintiff, and then and there went and came to the said defendant; yet the said defendant, well knowing the said J. last-mentioned apprentice, to be the servant and apprentice of the said plaintiff as aforesaid, then and there received the said J. the said last-mentioned apprentice, and wholly refused to deliver

ad Count, for receiving plaintiff's apprentice, who had absented himself from plaintiff's service.

over him to the said James his master, although so to do, to wit, on, &c. and oftentimes since, at, &c. was requested by the said James, but he the said defendant unlawfully detained and entertained, and kept the said J. the said last-mentioned apprentice so being the apprentice of the said J. from his said service from the first of June 1788, for a long space of time, to wit, from thence hitherto, whereby the said J. wholly lost the profit, benefit, and advantage which he, by reason of the service of the said J. K. the said last-mentioned apprentice, during all that time ought and might have had and received, and otherwise should and would have had and received, to wit, at, &c. Damages two hundred pounds.

W. WALTON.

The general issue was pleaded. The apprentice, it seems, was nephew to defendant, and had been taken into his house without his having the least notice of his being an apprentice, and had been retained in his service till the action brought, when *he was* immediately discharged by him, and the indentures of apprenticeship were destroyed.

I think the defendant may give the whole of his case in evidence under the general issue not guilty, and if he can

prove he did not know of his nephew's being an apprentice to the plaintiff, and that he had no notice from him, or any other person of it, it seems to me it will be a complete defence to the action. If the indentures of apprenticeship were not intended to be cancelled, but were accidentally lost or destroyed, and this can be made appear to the court and jury, I think less proof than the production of them will be admissible, viz. parol proof of the contents.

J. GRAHAM.

TORT.—EXCESSIVE DISTRESS.

Hilary Term, 29. Geo. III.

WARWICKSHIRE, to wit. John Crockett complains of Ralph Hubard being, &c.; for that whereas by the laws and customs of this realm no person whatsoever ought to be distrained by his or their goods and chattels for any matter, cause, or thing whatsoever, except by a reasonable distress; yet the said Ralph, well knowing the premises, but contriving and wrongfully intending to hurt, injure, harass, and aggrieve the said John by an excessive and unreasonable distress, against the laws and customs of this realm, heretofore, to wit, on, &c. at, &c. excessively and unreasonably took and distrained, and caused and procured to be taken and distrained divers goods and chattels of the said John, to wit, two boxes, &c. &c. of a large value, to wit, of the value of twenty pounds, there then found and being in certain apartments of the said John, part and parcel of a certain dwelling-house of the said Ralph, situate and being in, &c.; which said apartments the said John then, and for a long time before, held and occupied as tenant thereof to the said Ralph, as and for, and in the name of a distress for certain rent amounting to a small sum of money, to wit, the sum of eight shillings and sixpence, supposed to be before then due and payable, and then in arrear from the said John to the said Ralph

Declaration against defendant, for making an unreasonable distress on the plaintiff's goods.

for the aforefaid rent of the aforefaid apartments, and the faid Ralph wrongfully and unjustly kept and detained, and caused and procured to be kept and detained the faid goods and chattels fo excessively diftrained under fuch diftreffs as aforefaid, for a long time, to wit, from thence hitherto, againft the laws and customs of this realm, although at the time of the taking the aforefaid diftreffs he the faid Ralph well knew the faid diftreffs to be exceffive and unreaſonable, and that a much leſs number, to wit, one third part of the faid goods and chattels of the faid John would then and there have been a reaſonable and fufficient diftreffs for the faid arrears of rent, and would have been fufficient to have ſatiſfied the faid arrears of rent, and all the coſts and charges attending ſuch diftreffs, and of an appraiſement and ſale of the faid goods and chattels, had the ſame been ſold, and although the faid goods and chattels, at the time of the taking of ſuch diftreffs, were in ſuch different, ſeparate, and diſtinct quantities, and of ſuch various and diſtinct qualities, that the faid Ralph might then and there have diftrained a reaſonable part thereof without diftraining the whole thereof; by means of which faid ſeveral premiſes the faid John not only was and is greatly injured, haraſſed, and aggrieved, and hath ever ſince the taking of the faid diftreffs wholly loſt and been deprived of the uſe of the faid goods and chattels, but hath been forced and obliged to lay out divers ſums of money, in the whole amounting to a large ſum of money, to wit, the ſum of twenty pounds, in providing and procuring others for the uſe of himſelf and his family in lieu thereof, to wit,

ad Count. ſtates
that the plain-
tiff tendered a
reaſonable ſum
to defendant,
who refuſed to
accept it.

at, &c. : And whereas alſo the faid Ralph heretofore, to wit, on, &c. had taken and diftrained divers other goods and chattels of the faid John of a large value, to wit, of the value of twenty pounds, there then found and being as and for and in the name of a diftreffs for certain other rent, to wit, the ſum of eight ſhillings and ſixpence, then due and in arrear from the faid John to the faid Ralph, for and in reſpect of certain other apartments of the faid Ralph before then held and occupied by the faid John as tenant thereof to the faid Ralph; and thereupon the faid John afterwards, and whiſt the faid Ralph was in poſſeſſion of the faid laſt-mentioned goods and chattels under ſuch diftreffs thereof as aforefaid, to wit, on, &c. offered and tendered to the faid Ralph, in ſatiſfaction and diſcharge of the faid laſt-mentioned arrears of rent, and the coſts and charges of the faid laſt-mentioned diftreffs, a certain large ſum of money, to wit, the ſum of one pound one ſhilling, the ſame being then and there a ſufficient ſum to ſatiſfy and diſcharge the faid laſt-mentioned arrears of rent, together with all the coſts and charges of the faid laſt-mentioned diftreffs; and although he the faid Ralph ought then and thereto have accepted and received the ſame from the faid John, in diſcharge of ſuch arrears of rent, and the coſts and charges of the faid diftreffs, and to have forthwith given up and reſtored the faid goods and chattels ſo by him diftrained and taken as aforefaid to the faid John; yet the faid Ralph contriving, &c. to haraſs, oppreſs, and aggrieve the faid John in

the

this behalf, did not, nor would then and there, or at any other time whatever, accept and receive from the said John the said sum of money so by him tendered as aforesaid, in satisfaction and discharge of the said last-mentioned arrears of rent, and the costs and charges of the said last-mentioned distress, but then and there, and always afterwards, refused to accept the same from him the said John, to wit, at, &c.; whereby and by means of which said last-mentioned premises, the said last-mentioned goods and chattels of him the said John remained and continued, and have ever since the taking thereof been kept and detained in custody as such distress for the said last-mentioned arrears of rent as aforesaid, whereby the said John hath lost and been deprived of the use thereof, and hath been forced and obliged at a considerable inconvenience and expence, to provide himself with others in lieu thereof, to wit, at, &c. to the damage of the said John of two hundred pounds, and therefore, &c.

V. LAWES.

Michaelmas Term, 28. Geo. III.

GLOUCESTERSHIRE, to wit. W. H. complains of C. W. being, &c.; for that whereas the said W. H. long before, and at the several times hereinafter mentioned, and at the time of the committing the grievance hereinafter mentioned, was lawfully possessed of a messuage, tenement, farms, and lands, with the appurtenances, situate and being in the parish of, &c. as tenant thereof to the said C. W. under and by virtue of a certain demise thereof made by the said C. W. to the said W. H. at and under a certain yearly rent to be therefore paid by the said W. H. to the said C. W. for the same, to wit, at, &c. in, &c.: And whereas the said C. W. on, &c. at, &c. in, &c. seized, took, and distrained as a distress for certain arrear of the aforesaid rent then supposed and pretended to be due, in arrear, and payable from the said W. H. to the said C. W. under and by virtue of the aforesaid demise (amongst other things) to wit, one hundred acres of wheat, &c. &c. then growing and being in the said demised premises, of great value, to wit, of the value of one thousand pounds of lawful money of Great Britain, and there detained the same as such distress as aforesaid for the cause aforesaid; yet the said Charles, not regarding the *statute* in that case made and provided, but contriving and maliciously intending wrongfully and unjustly to injure and damnify the said W. H. and whilst the said wheat, &c. &c. were growing upon the aforesaid premises, and before the said wheat, &c. &c. or any of them, or any part thereof, were cut, made, gathered, cured, carried, and laid up, to wit, on, &c. at, &c. in, &c. did cause the same to be appraised, and afterwards, and whilst the said one hundred acres of wheat, &c. &c. were yet growing and standing, to wit, on, &c. at, &c. in, &c. did cause the same to be sold for and towards the satisfaction of the said arrears of rent so supposed to be due from the said W. H. to the said C. W. and so distrained for as aforesaid, contrary to the

Declaration against defendant, for selling and appraising standing corn, after having distrained it for rent in arrear, contrary to 11. Geo. 2. c. 9.

(a) See Debt on Statutes, Vol. VIII. Actions on Statutes, Index.

form

2d Count, for taking an excessive distress, to wit, for taking goods of the value of 88s. when only 61s. was in arrear.

11. Geo. 2. c. 19. s. 8.

3d Count, demise rent payable by half-yearly instalments.

form of the statute in such case made and provided; whereby and by reason and means of which said premises, the said wheat, &c. so appraised and sold as aforesaid, before the same was cut, sent, gathered, cured, made, carried, and laid up, were sold and disposed of at a much less price or sum than the same would have been sold and disposed of at if the same had been appraised and sold after the cutting, gathering, curing, making, carrying, and laying up the same, and at a much less price than the same were worth, to wit, at five hundred pounds less, and by reason thereof he the said W. H. hath been greatly injured, prejudiced, and damaged in the premises, to wit, at, &c.: And whereas also, &c. [same as the first Count as far as the gravamen, then proceed as follows]; yet the said Charles, not regarding the statute in that case made and provided, but contriving and maliciously intending wrongfully and unjustly to injure and damnify the said W. C. afterwards, and whilst the said last-mentioned wheat, &c. were growing on the said last-mentioned premises, to wit, on, &c. at, &c. did cause the same to be appraised, contrary to the form of the statute in that case made and provided; whereby and by reason and means of which said last-mentioned premises, the said last-mentioned wheat, &c. so appraised before the same were cut, &c. were afterwards sold and disposed of at such appraisement, and by reason thereof the same were appraised, sold, and disposed of at a much less price or sum than the same would have been appraised, sold, and disposed of at after the gathering, curing, making, and laying up the same, to wit, at five hundred pounds less than the same would have been appraised at, sold, and disposed of for, and the said William, by reason thereof, hath sustained great injury, prejudice, and damage, to wit, at, &c.: And whereas also the said William, on, &c. and for divers years then last past, held a certain other messuage, tenement, farm, and lands, situate, lying, and being in the parish of, &c. under and by virtue of a certain other demise thereof made by the said Charles to the said William for a term not yet expired, under the yearly rent of two hundred and sixty-three pounds, payable by two equal half-yearly payments in the year, that is to say, on, &c.; of which rent there was then, to wit, on, &c. due and in arrear from the said W. H. to the said C. H. the sum of six hundred and fifteen pounds and no more; yet the said Charles, well knowing the premises last aforesaid, but contriving and maliciously intending wrongfully and unjustly to injure and damnify the said William, on, &c. at, &c. in, &c. took, seized, and distrained divers cattle, goods, and chattels, and divers large quantities of corn, &c. then being and growing in and upon the said demised premises last-mentioned, as and for a distress for eight hundred and eighty-two pounds for rent of the said last-mentioned demised premises, then and there pretended and claimed by the said C. W. to be due and in arrear from the said William, and the said cattle, &c. &c. so distrained under the colour and pretence aforesaid; he the said C. W. afterwards, to wit, on, &c. sold and disposed thereof at and for a much larger sum

sum than the aforesaid rent then actually due, and the money thereof arising and coming, converted and disposed thereof to his own use in payment and satisfaction as well of the said rent so pretended to be due and in arrear, whereas in truth and in fact no more rent than the aforesaid sum of five hundred and nineteen pounds was then due and in arrear from the said W. H. to the said C. W. at the time of the taking of the said cattle, &c. in the manner last-mentioned; whereby the said William says that he is injured, and hath sustained damage to the value of two hundred pounds, &c.

Drawn by MR. GRAHAM.

SURRY, to wit. Henry Wilson complains against John Winter being, &c. at, &c. for that whereas by the laws and statutes of this realm, no one ought to be distrained by beasts of the plough for the debt of the king, or of any other person, or on any other occasion by the officers or ministers of , or of any other person so long as he shall have any other goods and chattels whereon a reasonable or sufficient distress may be had and levied for the same (except only such beasts of the plough which shall happen to be found doing damage to any one, which by the laws and customs of this realm ought to be distrained for the same); yet the said John, well, &c. but disregarding, &c. the statute in such case made and provided, on the fifteenth day of October, A. D. 1776, at the said, &c. took and distrained divers beasts of the plough, to wit, eleven oxen of the said plaintiff, (the same beasts not being found doing damage to any one, but then and there being in and upon a certain tenement, with the appurtenances of the said plaintiff, at, &c. which said tenement the said plaintiff then held and enjoyed, and for one year and more next before and ending on the twenty-ninth day of September, &c. had held and enjoyed a tenement thereof to the defendant, by virtue of and under a demise thereof before then made to the plaintiff for a certain term of years which is not yet expired), for one hundred and seventy-two pounds of lawful, &c. and being one year's rent of the said tenement on the said, &c. aforesaid, and also at the said time of taking the distress above-mentioned, supposed to be due and in arrear from the plaintiff to the defendant, although at the time of the taking of the said distress there were on the aforesaid premises divers other goods and chattels of the plaintiff, besides beasts of the plough, to wit, one hundred quarters of wheat, &c. of the plaintiff, of the value of three hundred pounds of like lawful, &c. whereof a reasonable distress might have been made and levied in the room and stead of the said beasts of the plough, sufficient to satisfy and pay the said rent so due and in arrear as aforesaid; and the said defendants then and there sold the said beasts of the plough of the plaintiff, and converted and disposed of the money arising by such sale thereof to his own use against the laws and customs of this realm, and against the peace of our lord the now king, by means whereof the plaintiff hath been

Declaration for
distraining beasts
of the plough for
rent, (although
there were other
property on the
premises liable
to distress),
whereby plain-
tiff was prevent-
ed from tilling
his land.

2d Count, for
an unreasonable
distress.

3d Count, and
thereby.

been greatly hindered and incommoded in the necessary manuring and cultivation of the said tenement, to wit, at the parish aforesaid, in the county aforesaid: And whereas, &c. the defendant, on, &c. aforesaid, at, &c. took and distrained other the beasts of the plough, to wit, ten other oxen, and also of the beasts of the plaintiff, to wit, eleven milch cows, eight hogs, and eleven pigs, whereby the said plaintiff tilled his land, then being in and upon a certain other tenement of the said plaintiff, situate, &c. as aforesaid, not for damage feasant, but for certain rent then supposed to be due, owing, in arrear, and unpaid from the plaintiff to the defendant, for and in respect of the said last-mentioned tenement, although there were then and there goods and chattels of the plaintiff other than the live cattle last above-mentioned in and upon the said last-mentioned tenement, sufficient for a reasonable distress for the rent last aforesaid; and afterwards, to wit, on the said, &c. at, &c. aforesaid, sold the said last-mentioned beasts of the plough and other beasts, whereby the said plaintiff tilled his land, and the money arising from the sale thereof converted, &c. to the use of him the said defendant, contrary to the form of the statute in that case made and provided, and against the peace of our lord the now king: And whereas the plaintiff for one year and more next before and ending on the said, &c. aforesaid, had held and enjoyed, and from thence continually until and at the time of the making of the distress hereinafter next mentioned, also held and enjoyed a certain other tenement, with the appurtenances, situate and being at, &c. aforesaid, as tenant thereof to the defendant, by virtue of and under a certain other demise thereof before then made to the said plaintiff for a certain other term of years which is not yet expired, under the yearly rent of one hundred and seventy-two pounds of, &c. of which last-mentioned rent there was, on the said, &c. aforesaid, and also at the time of the making of the distress hereinafter next mentioned, due and in arrear from the said plaintiff to the said defendant the sum of one hundred and seventy-two pounds and no more, being of the said last-mentioned tenement which accrued and became payable on the said, &c. aforesaid; yet the said defendant, well knowing, &c. but contriving, &c. to injure the said plaintiff, and not regarding the statute in that case made and provided on the said, &c. aforesaid, took and distrained for the said last-mentioned arrears of rent, divers, &c. of the said plaintiff, found and being in and upon the last-mentioned tenement, with the appurtenances, of much greater value than the said last-mentioned arrears of rent, to wit, of the value of three hundred pounds and upwards, and thereby took a great and unreasonable distress for the said last-mentioned arrears of rent, and sold the said last-mentioned cattle, &c. and the money arising from such sale, converted and disposed of to his own use, contrary to the form of the statute in that case made and provided, and against the peace of our lord, &c. Damages three hundred pounds and awards.

EDW. LAW.

The

Plea first, not guilty to the whole declaration; secondly, (by leave of the court) at the taking, &c. of the beasts in two first Counts, and after averring that the taking, &c. and also the beasts mentioned in those Counts are the same, that on the said, &c. aforesaid, the plaintiff gave leave and licence to the defendant to take, &c. the said beasts for one hundred and seventy-two pounds of lawful, &c. being for one year's rent as and for a distress for rent, and to sell the said beasts of the plaintiff for the purpose of raising money for and towards the satisfaction and discharge of the said rent so being in arrear and unpaid to the defendant; and this, &c.

Replication, that the plaintiff did not give such leave or licence, and issue.

TORT.—AGAINST SHERIFFS.

MIDDLESEX, to wit. J. S. complains of sir J. S. and Declaration against the sheriffs of Middlesex, for taking goods off the premises, which they had seized under a *fiery facias*, without first paying plaintiff half a year's rent which was in arrear.

B. W. late sheriff of the said county of Middlesex, he the said sir J. S. being in the custody of the marshal of the marshalsea of our sovereign lord the now king, before the king himself, and he the said B. W. having privilege of parliament; for that whereas as one J. H. on, &c. and for the space of half a year then last past, held, used, occupied, and enjoyed two certain messuages or dwelling houses, with the appurtenances, situate, lying, and being in Wellclose Square, in the parish of, &c. as tenant thereof to the said plaintiff at and under a certain rent or sum of money payable therefore by the said J. H. to the said plaintiff for the same, to wit, at, &c.: And whereas on, &c. at, &c. in, &c. fourteen pounds of the rent aforesaid due and payable by the said J. H. to the said plaintiff for the said messuages or dwelling-houses for one half year ended at and upon that day and in that year, became and were due, in arrear, and payable, and continually from thenceforth hitherto have been, and still are in arrear and payable: And whereas the said fourteen pounds of the said rent for the said messuages or dwelling-houses so being in arrear and unpaid by the said J. H. to the said plaintiff as aforesaid, they the said defendants so being sheriff of the county aforesaid, afterwards, to wit, on, &c. at, &c. in, &c. they the said defendants then being sheriffs of the said county of Middlesex, by virtue of and under pretext of a certain writ of our said lord the king of *fiery facias* against the said J. H. at the suit of one H. W. and M. W. out of the court of our said lord the king, before the king himself then and still here, to wit, at, &c. in, &c. before that time sued forth and prosecuted upon a certain judgment against the said J. H. at the suit of the said H. W. and M. W. in the said court here, before that time had, obtained, and directed to the then sheriff of the county of Middlesex,

sex, took the goods and chattels of the said J. H. then being in the said two messuages or dwelling-houses, with the appurtenances, so in the tenure and occupation of the said J. H. as aforesaid, to a large amount beyond the amount of the said arrears of rent so due and owing from the said J. H. to him the said plaintiff, that is to say, to the amount or sum of forty-eight pounds of lawful money of Great Britain: And the said plaintiff further says, that after the taking of the said goods and chattels so being in the said messuages or dwelling-houses, with the appurtenances as aforesaid, and before the removal of the same under pretext of the said writ, that is to say, on, &c. at, &c. in, &c. he the said plaintiff gave notice to the said defendants, so being sheriff as aforesaid, of the aforesaid rent so being due and in arrear to the said plaintiff from the said J. H. as aforesaid, and then and there requested of the said defendants, then being sheriff as aforesaid, that he the said plaintiff might be paid his said rent so due, in arrear, and unpaid to the said plaintiff as aforesaid, before the said goods and chattels, or any part thereof, should be removed from out of the said two messuages or dwelling-houses, with the appurtenances; yet the said defendants, then being sheriff of the said county of Middlesex, well knowing the premises, but not regarding the duty of his said office, nor the statute in such case made and provided, but contriving and wrongfully and deceitfully intending to deceive and defraud the said plaintiff in this respect of the said arrears of the said rent so due to him as aforesaid, and of his the said plaintiff's remedy for the recovery thereof, under colour and pretext of the said writ, on, &c. wrongfully, injuriously, and deceitfully removed and carried away the said goods and chattels so taken as aforesaid from and out of the said messuages or dwelling-houses, with the appurtenances, contrary to the form of the statute in that case made and provided, without paying or satisfying the said plaintiff the said arrears of the said rent so due and owing, and in arrear to him as aforesaid, or any part thereof: And the said plaintiff saith, that he hath not at any time since been paid or satisfied the said arrears of the said rent, or any part thereof, but the same, and every part thereof, is due, in arrear, and unpaid from the said J. H. to the said plaintiff, whereby he the said plaintiff hath been and is deprived of the benefit of distress for the recovery and satisfaction of the said arrears of the said rent, and is in great danger of losing the same, to wit, at, &c.: And whereas, &c. [Same as first, except stating J. H. to be possessed of one messuage only]: And whereas, &c. [Same as 2d Count, only stating one quarter's rent only to be in arrear. Damages, &c. A. PALMER.

In this action you need not state all the particulars of the demise, but if you do, and they are not proved as stated, there

shall be a nonsuit, *Bristow v. Wright*, Doug. 665.

KENT,

KENT, to wit. R. C. complains of J. H. esquire, late sheriff of the county of Kent, being, &c. ; for that whereas the said R. C. heretofore, to wit, in the term of St. Hilary, in the twenty-sixth year of the reign of our sovereign lord the now king, in the court of our said lord the now king of the bench at Westminster, in the county of Middlesex, before the justices there, by the consideration and judgment of the same court recovered against one G. C. late of, &c. as well a certain debt of eighty pounds as sixty-three shillings, which were adjudged by the same court to the said R. C. for his damages which he had sustained by reason of the detaining of that debt, whereof the said G. C. was convicted, as by the record and proceedings thereof in the same court of the bench at Westminster aforesaid, more fully appears; which said debt and damages so as aforesaid recovered, being wholly unpaid and unsatisfied to the said R. C. he the said R. C. for the obtaining the said debt and damages, afterwards, to wit, on, &c. in the twenty-sixth year of the reign of our said sovereign lord the now king, sued out of the said court of our said lord the king of the bench here at Westminster aforesaid, a certain writ of our said lord the king of *fiery facias*, directed to the then sheriff of Kent, by which said writ the said lord the king commanded the said sheriff that he should cause to be levied of the goods and chattels in his bailiwick of the said G. C. the debt and damages aforesaid, and that the said sheriff should have the money before his said majesty's justices at Westminster in fifteen days of Easter, to render to the said plaintiff for the debt and damages aforesaid, and that the said sheriff should have there then that writ; which said writ afterwards, and before the return of the same writ, to wit, on, &c. in the twenty-sixth year aforesaid, at, &c. in, &c. was delivered to the said defendant, the said defendant then and there, and continually from thenceforth until and at the return of the said writ, being sheriff of Kent aforesaid, to be executed in due form of law † : And the said plaintiff avers, that the said G. C. at the time of the delivery of the said writ of *fiery facias* to the said defendant as aforesaid, and afterwards, and before the return of the said writ, had divers goods and chattels within the bailiwick of the said sheriff, sufficient to have satisfied the said plaintiff his debt and damages aforesaid, to wit, at, &c. in, &c. ; and the said defendant, so being sheriff as aforesaid, not regarding his duty in this behalf, but contriving and fraudulently intending to deceive the said plaintiff, and to defraud him of his said debt and damages, did not make and levy the debt and damages aforesaid, or any part thereof, and pay to or to the use of the said plaintiff the same debt and damages, or any part thereof, but on the contrary thereof did, amongst other things, falsely, fraudulently, and deceitfully return upon the said writ to the justices here, that he the said defendant had caused to be levied of the goods and chattels of the said G. C. twenty-six pounds; five pounds, part whereof, he the said defendant had retained for the poundage and necessary expences attending the levy and sale of the said goods and chattels, and twenty-one pounds, residue of

Declaration against the late sheriff of Kent, for falsely returning to a *fiery facias*, that he had levied part of debt, part of which he had retained for poundage, and had paid residue to the plaintiff, which he had not done.

2d Count.

of the said sum above levied, he the said defendant had paid to and to the use of the said plaintiff, in satisfaction of so much of his debt and damages aforesaid; whereas in truth and in fact the said defendant did not levy or pay the said sum of twenty pounds, residue thereof, or any part thereof to or to the use of the said plaintiff, or to any other person by his the said plaintiff's authority, or upon his behalf, but hath wholly failed and refused so to do, and by reason of the premises he the said plaintiff hath lost and been deprived of his remedy for obtaining the payment of the said sum of twenty-one pounds, and every part thereof, and hath wholly lost the same: And whereas, &c. [Same as in first Count to this mark ‡; and then go on as follows]: And the said plaintiff says, that afterwards, and before the return of the said last-mentioned writ, the said defendant so being Sheriff as aforesaid, did by virtue of the same writ cause to be levied of the goods and chattels of the said G. C. in his bailiwick twenty-six pounds; and the said defendant, so being Sheriff as aforesaid, not regarding the duty of his said office of Sheriff in that behalf, but contriving and intending to deceive and defraud the said Robert in that behalf, afterwards, to wit, at the return of the said writ, amongst other things, falsely, fraudulently, and deceitfully returned upon the said last-mentioned writ to the said justices here, that he the said defendant had caused to be levied of the goods and chattels of the said G. C. twenty-six pounds, five pounds, part whereof, he the said defendant had retained for the poundage and the necessary expences attending the levy and sale of the said last-mentioned goods and chattels, twenty-one pounds, residue of the said sum above levied, he the said defendant had paid to and to the use of the said plaintiff, in satisfaction of so much of the said debt and damages last aforesaid, whereas in truth and in fact the said defendant did not pay the said sum of twenty-one pounds, residue thereof, or any part thereof, to or for the use of the said plaintiff, but has wholly failed and refused so to do, and still refuses so to do, and by reason of the premises he the said plaintiff hath lost and been deprived of his remedy for the payment of the said last-mentioned sum, or any part thereof, and has wholly lost the same, to wit, at, &c. Damage, &c.

A. PALMER.

Declaration against Sheriff of Middlesex, to wit. R. B. complains of B. W. and J. S. esquires being, &c.; for that whereas the said R. heretofore, to London, for a wit, in (1) Easter term, in the twenty-sixth year of the reign of our lord the now king, in the court of our said lord the king, before the king himself here, to wit, at, &c. by the consideration and judgment of the said court recovered against *one* (2) Joseph Wolfe as well a certain (3) debt of three hundred pounds as also eighty-three shillings, WHICH IN AND BY THE SAID COURT WERE ADJUDGED TO THE SAID R. for his damages which he had sustained by reason of the detaining the said (4) debt, whereof the said Joseph was convicted, as by the record and proceedings

(1) "the said"
(2) "the said"
(3) "other"
(4) "last-mentioned"

ceedings thereof remaining in the said court here, to wit, at W. &c. fully appears; which said (5) judgment remains in its full force, not reversed, annulled, set aside, or satisfied: And the said Robert further saith, that the said (6) debt and damages, or any part thereof, not being paid or satisfied (7), and the said (8) judgment being in full force, he the said R. heretofore, to wit, on, &c. sued out of the said court here a certain (9) writ of our said lord the king called a *testatum fieri facias* upon the said (10) judgment, directed to the sheriffs of London, by which said (11) writ our said lord the king commanded the said sheriffs that they should cause to be levied of the goods and chattels in their bailiwick of the said Joseph Wolfe as well the said debt of three hundred pounds, which the said Robert so recovered against him as (12) aforeaid, as also the said eighty-three shillings which in the court of our said lord the king, before the king himself here, were so as aforeaid awarded to the said Robert for his damages which he sustained by reason of the detaining of the said (13) debt, and that they the said sheriffs should have that money before our said lord the king at Westminster, on Monday next after the morrow of the Ascension of Our Lord then next, and now last past, to render to the said Robert for the debt and damages (14) aforeaid, whereof the said Joseph was convicted, and for that our said lord the king's sheriff of Middlesex, at a certain day then past, had returned to our said lord the king that the said Joseph had not any goods and chattels in his bailiwick, whereof he the said sheriff could cause to be made the debt and damages (15) aforeaid, whereas it had been sufficiently attested in the said court of our said lord the king before the king himself, that the said Joseph had sufficient goods and chattels in the said sheriffs of London's custody to satisfy the same, and that the said sheriffs have there that writ, which said (16), writ, WITH A CERTAIN INDENTURE THEREON MADE, DIRECTING THE SAID SHERIFFS TO LEVY ONE HUNDRED AND EIGHTY-FOUR POUNDS, PARCEL OF THE SAID DEBT AND DAMAGES THEREIN MENTIONED, SO RECOVERED BY THE SAID R. AS (17) AFORESAID, BESIDES SHERIFF'S POUNDAGE, OFFICER'S FEES, AND ALL OTHER INCIDENTAL CHARGES, afterwards and before the return thereof, to wit, on, &c. was delivered to the said B. W. and J. S. who then and there, and from thence until and at and after the return thereof as hereinafter mentioned, were sheriffs of London to be executed in due form of law (18); by virtue of which said writ the said B. W. and J. S. so being sheriffs of London afterwards, and before the return of the said writ, to wit, on, &c. and within the said sheriff's bailiwick, took into their hands and possession divers goods and chattels of the said Joseph of a large value, to wit, to the value of the said money so by the said indenture on the aforeaid (19) writ, directed to be levied as aforeaid (20), and parcel of the aforeaid debt and damages, and thereof levied such money, to wit, at, &c.; yet the said B. W. and J. S. so being sheriffs of L. aforeaid, not regarding the duty of their office as such sheriffs, but contriving

(5) "last-mentioned"
(6) "last-mentioned"
(7) "to the said Robert,"
(8) "last-mentioned"
(9) "other"
(10) "last-mentioned"
(11) "last-mentioned"
(12) "last"
(13) "last-mentioned"
(14) "last"
(15) "last"
(16) "last-mentioned"
(17) "last"
(18) "and the said Robert avers, that the said B. W. and J. S. so being"
(19) "sheriffs of Londonaforeaid afterwards and before the return of the said last mentioned writ, to wit, on, &c. within their bailiwick. seized and took"
(20) "last-mentioned"

(21) " under colour and pretence of levying such money, and might thereof have levied the same as they ought to have done"

(22) " last-mentioned"

and fraudulently intending wrongfully and unjustly to hurt, injure, and prejudice the said Robert in this behalf, and to deprive him of great part of his said (21) debt and damages, and of the means of recovering of the same, they the said B. W. and J. S. so being such sheriffs as aforesaid (22)†, had not, nor had either of them the said money so by them levied as aforesaid, or any part thereof before our said lord the king at Westminster at the return of the said writ, to tender to the said Robert according to the exigence of the said writ, nor have the said B. W. and J. S. so being sheriffs as aforesaid, paid the said money so by them levied as aforesaid, or any part thereof, to the said R. but therein wholly failed and made default, to wit, at, &c. and at the return of the said writ the said B. W. and J. S. as such sheriffs as aforesaid, falsely, maliciously, and deceitfully returned to our said lord the king at Westminster aforesaid, on the said writ, that the said Joseph Wolfe, in the said writ named, had not any goods and chattels in their said bailiwick, whereby the said sum so indorsed to be levied on the back of the said writ as aforesaid, or any part thereof they could cause to be made, as by the said writ so indorsed as aforesaid, and the return thereof remaining of record in the said court of our said lord the king, before the king himself, to wit, at Westminster aforesaid, in, &c. fully appears; by means of which said premises the said R. is greatly injured, and hath been deprived of the means of obtaining the said part of his said debt and damages so by the indorsement on the said writ to be levied as aforesaid, and is likely to wholly lose the same. [A 2d Count same as first, omitting what is in Italic, and inserting what is in the margin, till you come to this mark †, when go on as follows]; while the said last-mentioned goods and chattels so remained in their custody under the said seizure thereof, and before the return of the said last-mentioned writ, to wit, on, &c. so negligently, carelessly, and incautiously behaved, conducted, and demeaned themselves in the execution of their said office of sheriffs as aforesaid, that they then and there suffered and permitted the said last-mentioned goods and chattels to be purloined, rescued, and taken away out of their custody and possession, by some person or persons to the said Robert unknown, and the same were thereby wholly lost; and at the return of the said writ, the said B. W. and J. S. as such sheriffs as aforesaid, falsely, maliciously, and deceitfully returned to our said lord the king at Westminster aforesaid, on the said last-mentioned writ, that the said Joseph Wolfe, in the said writ named, had not any goods or chattels in their said bailiwick whereby the said sum so indorsed to be levied on the back of the said last-mentioned writ as aforesaid, or any part thereof they could cause to be made as by the said last-mentioned writ so indorsed as aforesaid, and the return thereof remaining of record in the said court here, to wit, at Westminster aforesaid, more fully appears; by means of which, &c. [as in first Count.] [A third Count same as second, omitting what is in small capitals till you come to this mark §, when proceed as follows]:

And

And the said Robert avers, that the said Joseph Wolfe, at the time of the delivery of the said last-mentioned writ to the said B. W. and J. S. so being sheriffs of London as aforesaid, to be executed as aforesaid, and from thence for a long time, to wit, until the return of the said last-mentioned writ, had divers goods and chattels in the bailiwick of the said then sheriffs to a large value, to wit, to the value of the said money so by the said indorsement on the said last-mentioned writ as aforesaid directed to be levied as aforesaid, and that the said B. W. and J. S. so being sheriffs of London, might and ought to have made and levied such money of and upon the said last-mentioned goods and chattels, whereof the said B. W. and J. S. then and there had due notice; yet the said B. W. and J. S. so being such sheriffs of L. not regarding the duty, &c. but contriving, &c. the said R. in this behalf, and to deprive him of a great part of his said last-mentioned debt and damages, and of the means of recovering the same, the said B. W. and J. S. so being such sheriffs as aforesaid, did not make or levy, or cause to be made or levied of those goods and chattels in his bailiwick the said money so by the said indorsement on the said last-mentioned writ directed to be levied as aforesaid, and parcel of the said last-mentioned debt and damages, but therein wholly failed and made default, to wit, at, &c. and at the return of the said last-mentioned writ they the said B. W. and J. S. falsely, maliciously, and deceitfully returned to our said lord the king at Westminster aforesaid on the said last-mentioned writ that the said Joseph Wolfe in the said last-mentioned writ named had not any goods and chattels in their said bailiwick, &c. [as in first Count]; to the damage of the said R. of five hundred pounds; and therefore he brings his suit.

V. LAWES.

MIDDLESEX, to wit. Be it remembered, that on Monday next after the morrow of All Souls, in this same term, before our lord the king at Westminster, comes James Tyte, by James Lowe his attorney, and brings into the court of our said lord the king, before the king himself now here, his certain bill against sir Richard Glode, knight, and John Liptrap, esquire, being in the custody of the marshal of the Marshalsea of our lord the now king, before the king himself, of a plea of trespass on the case, and there are pledges for the prosecution, to wit, John Doe and Richard Roe; which said bill follows in these words, to wit, Middlesex, to wit: James Tyte complains of sir Richard Glode, knight, and John Liptrap, esquire, being in the custody of the marshal of the Marshalsea of our lord the now king, before the king himself; for that whereas by a certain act of parliament made at the parliament of lady Elizabeth, late queen of England, &c. at a session thereof holden at Westminster, in the county of Middlesex, begun on the twenty-ninth day of October, in the twenty-eighth year of her reign, entitled, "An act to prevent

Action of tort against the sheriff by the party grieved for levying more than the sum in the writ of execution without paying the overplus.

Extortion in Sheriffs, Under Sheriffs, and Bailiffs of Franchises or Liberties in Case of Execution," it was amongst other things enacted, that it shou'd not be lawful, from the first day of May then next ensuing, to or for any sheriff, under sheriff, bailiff of franchises or liberties, nor for any of their, or either of their officers, ministers, servants, bailiffs, or deputies, nor for any of them, by reason and colour of their office or offices, to have, receive, or take of any person or persons whatsoever, directly or indirectly, for the serving and executing of any extent or execution upon the body, lands, goods, or chattels of any person or persons whatsoever more or other consideration or recompence than in the said act was and should be limited and appointed, which shall be lawful to be had, received, and taken, that is to say, twelvecence of or for every twenty shillings where the sum exceed not one hundred pounds, and sixpence of and for every twenty shillings being over and above the said sum of one hundred pounds that he or they should so levy or extend and deliver in execution or take the body in execution for by virtue and force of any extent or execution whatsoever, upon pain and penalty that all and every sheriff, under sheriff, bailiff of franchises and liberties, their and every of their ministers, servants, officers, bailiffs, or deputies, which at any time after the said first day of May then next ensuing should directly or indirectly do the contrary, should lose and forfeit to the party grieved his treble damages, and should forfeit the sum of forty pounds of good and lawful English money, for any time that he, they, or any of them should do the contrary, the one moiety thereof to be to the said sovereign lady the queen, her heirs, and successors, and the other moiety thereof to the party or parties that would sue for the same by any plaint, action, suit, bill, or information, wherein no essoign, wager of law, or protection should be allowed, as by the said act, relation being thereunto had, will more fully appear: And the said James further says, that after the making of the said act, and after the first of May therein mentioned, to wit, on the twelfth day of June, in the thirty-sixth year of the reign of our lord the now king, there issued out of the court of our said lord the king of the bench at Westminster, in the county of Middlesex aforesaid, a certain writ of our said lord the king, called a *fiери facias*, directed to the sheriff of Middlesex, by which said writ our said lord the king commanded the said sheriff that he should cause to be levied on the good and chattels in his bailiwick of one George Birch and the said James Tyte as well a certain debt of one thousand two hundred pounds, which William Dixon had recovered against them in the said court of our said lord the king before his justices at Westminster, as also five pounds, which in the same court were awarded to the said William Dixon for his damages which he sustained by reason of the detaining the said debt, and that the said sheriff should have that money before his said majesty's justices at Westminster on the morrow of All Souls to render to the said William Dixon for the debt and damages aforesaid whereof the said George and James were

were convicted, and that the said sheriff should have then and there that writ, on which said writ there was written a certain indorsement as follows, to wit, "Levy twenty-eight pounds one shilling and eightpence, besides sheriff's poundage, officers fees, and costs of levy," and which said writ, with the said indorsement thereon, afterwards, and before the said return thereof, to wit, on the twenty-fourth day of June, in the year of Our Lord 1796, at Westminster, in the said county of Middlesex, was delivered to the said sir Richard and John, who then, and from thence until and at the time of committing the grievance hereinafter next mentioned, were sheriffs of the said county of Middlesex, to be executed in due form of law; by virtue of which said writ, the said sir Richard and John, so being sheriffs of the said county of M. as aforesaid, afterwards, and before the said return of the said writ, to wit, on the day and year last aforesaid, at W. aforesaid, in the county aforesaid, and with their bailiwick, as such sheriff, seized and took in execution divers goods and chattels of the said James there then found and being, of a large value, and then and there levied the said sum of money so indorsed on the said writ as aforesaid; nevertheless the said sir Richard and John, so being sheriffs of the said county of Middlesex as aforesaid, not regarding their duty as such sheriffs as aforesaid, nor the statute in such case made and provided, afterwards, to wit, on the same day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, wrongfully, illegally, and oppressively had received and took of and from the said James for the suing and executing of the said execution more and other consideration and recompence than in the said act is limited and appointed in that behalf, that is to say, divers sums of money, in the whole amounting to the sum of fifteen shillings and sixpence, more than in the said act is so limited and appointed; whereby the said James is damaged and aggrieved to the amount of the said sum of fifteen shillings and sixpence contrary to the form of the statute in such case made and provided, to wit, at Westminster aforesaid, in the county aforesaid: And the said James further says, that after the making of the said act of parliament, and after the first day of May therein mentioned, to wit, on the said twelfth day of June, in the thirty-sixth year aforesaid, there issued out of the said court of our said lord the king of the bench at Westminster aforesaid, in the county aforesaid, a certain other writ of our said lord the king, called a *fiery facias*, directed to the said sheriffs of Middlesex, by which said writ our said lord the king commanded the said sheriff that he should cause to be levied of the goods and chattels in his bailiwick of one George Birch and the said James Tyte as well a certain debt of one thousand two hundred pounds, which William Dixon had recovered against them in the said court of our lord the king before the justices at Westminster, as also five pounds, which in the same court were awarded to the said William Dixon for his damages which he sustained by reason of the detaining the said last-mentioned debt, and that the said sheriff should have that money before his said majesty's

2d Count.

justices at Westminster on the morrow of All Souls, to render to the said William Dixon for the debt and damages last aforesaid, whereof the said George and James were convicted, and that the said sheriff should have there then that writ, on which said last-mentioned writ there was written a certain indorsement as follows, to wit, "Levy twenty-eight pounds one shilling and eightpence, besides sheriffs poundage, officers fees, and costs of levy," and which said last-mentioned writ, with the said indorsement thereon, afterwards, and before the said return thereof, to wit, on the said twenty-fourth day of June, in the said year of Our Lord 1796, at Westminster aforesaid, in the county aforesaid, was directed to the said sir Richard and John, who then, and from thence until and at the time of committing the grievance hereinafter mentioned, were sheriffs of the said county of Middlesex, to be executed in due form of law; by virtue of which said last-mentioned writ the said sir Richard and John, so being sheriffs of the said county of Middlesex as aforesaid, afterwards, and before the said return of the same writ, to wit, on the day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, and within their bailiwick, as such sheriff seized and took in his execution divers goods and chattels of the said James there then found and being, of a large value, and then and there levied the said sum of money so indorsed on the said last-mentioned writ as aforesaid; nevertheless the said sir Richard and John, so being sheriffs of the said county of Middlesex as aforesaid, not regarding their duty as such sheriffs as aforesaid, nor the statute in such case made and provided, afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, wrongfully, illegally, and oppressively had received and took of and from the said James for the serving and executing of the said execution more and other consideration and recompence than in the said act is limited and appointed in that behalf, that is to say, the sum of five shillings, more than in the said act is so limited and appointed; whereby the said James is damaged and aggrieved to the amount of the said last-mentioned sum of five shillings contrary to the form of the statute in such case made and provided, to wit, at Westminster aforesaid, in the county aforesaid; to the damage of the said James of one hundred pounds; and therefore he brings suit, &c.

V. LAWES.

Plea.

And the said sir Richard and John, by Thomas Lane their attorney, come and defend the wrong and injury, when, &c. and say, that they are not guilty of the premises above laid to their charge in manner and form as the said James hath above thereof complained against them; and of this they put themselves upon the country; and the said James doth the like, &c.: therefore let a jury come before our lord the king at Westminster on next after twelve, &c. by whom, &c. and who neither, &c. because as well, &c. the same day is given to the parties aforesaid, at the same place.

MIDDLE-

MIDDLESEX, to wit. George Hodgson complains of Declaration a-
 Richard Wyat, esquire, sheriff of the county of Suffex, being, ^{gainst sheriff of}
 &c.; for that whereas the said George heretofore, to wit, in ^{Suffex for a false}
 Michaelmas Term last past, in the twenty-seventh year of the ^{return to a *feri*}
 reign of our said lord the king, in the court of our said lord the ^{*facias* sued out}
 king, before the king himself (the same court then and still being ^{on a judgment}
 at Westminster, in the said county of Middlesex), by bill, and ^{recovered by}
 without the writ of our said lord the king, and by the considera- ^{plaintiff in B.R.}
 tion and judgment of the same court, recovered against one ^{the return was}
 Thomas Dennett, gentleman, as well a certain debt of three ^{*nulla bona.*}
 hundred pounds, as sixty-three shillings which were adjudged by
 the same court to the said George for his damages which he had
 sustained as well by reason of the detaining of that debt as for his
 costs and charges by him about his suit in that behalf expended,
 whereof the said Thomas was convicted, as by the record and
 proceedings thereof remaining in the same court of our said lord
 the king here, before the king himself, at Westminster aforesaid,
 more fully appears; which said judgment still remains in full
 force, strength, and effect, in no wise reversed, vacated, or an-
 nulled, paid off, or satisfied; and the said judgment so remaining
 in full force, strength, and effect, in no wise reversed, vacated,
 or annulled, and the said debt and damages not being paid or sa-
 tisfied to the said George, he the said George, for obtaining of
 the said debt and damages aforesaid, afterwards, to wit, on the
 twelfth of February, in the twenty-seventh year of the reign
 of our said lord the king, prosecuted out of the court of our
 said lord the king, before the king himself (the same court then,
 &c.), a certain writ of our said lord the king of *feri facias*, di-
 rected to the sheriff of Suffex, by which said writ the said lord the
 king commanded the said sheriff that he should cause to be made
 of the goods and chattels of the said Thomas the debt and damages
 aforesaid, in form aforesaid recovered, and that the said sheriff
 should have the money before the said lord the king on Wednesday
 next after fifteen days from the day of Easter, to render to the said
 George for the debt and damages aforesaid, whereof the said
 Thomas was convicted as aforesaid, and that the said sheriff should
 have there then that writ, which said writ afterwards, and before
 the return thereof, to wit, on the thirtieth of March 1787, at
 Westminster aforesaid, in the said county of Middlesex, was de-
 livered to the said Richard, who then, and continually from
 thence until and after the said return of that writ, was and still is
 sheriff of the said county of Suffex, to be executed in due form of
 law; and the said George avers, that at the time of the delivery
 of the said writ of *testatum feri facias* to the said Richard as
 aforesaid, and afterwards and before the return of that writ, that
 is to say, on the same day and year last aforesaid, the said Thomas
 had divers goods and chattels within the bailiwick of the said
 Richard, which might have made and levied the debt and damages
 aforesaid, as he was by the said writ commanded, to wit, at
 Westminster aforesaid, in the county of Middlesex aforesaid;

nevertheless the said Richard, so being sheriff of the said county of Sussex, not regarding the duty of his office of sheriff in that behalf, but contriving and fraudulently intending to deceive the said George, and to defraud him of his said debt and damages aforesaid, did not make or levy the debt and damages aforesaid, or any part thereof, of the goods and chattels of the said Thomas, but wholly refused and neglected so to do and at the return of the said writ did falsely, fraudulently, and deceitfully return upon the said writ to our said lord the king, in the court of our said lord the king, before the king himself (the same court then, &c.), that the said Thomas had not any goods or chattels in his bailiwick whereof or whereby he could cause the debt or damages aforesaid, or any part thereof, to be levied; and by reason of the premises the said George is deprived of his remedy for obtaining his debt and damages, and hath wholly lost the same, to wit, at Westminster aforesaid, in the said county of Middlesex; to the damage, &c.

Drawn by Mr. GRAHAM.

Trinity Term, 27. Geo. III.

GERING, JUNIOR,
against

MIDDLESEX,
to wit. Richard
Geering the

Declaration against the sheriff of London. 1st Count, stating that having arrested one J. G. at the suit of plaintiff, they voluntarily suffered him to escape, and returned non est inventus.

LE MESURIER AND ANOTHER, ESQUIRES. }
younger complains of Paul le Mesurier and Charles Higgins, esquires, being, &c. of a plea of trespass on the case; for that whereas one John Gilbert, before and at the time of the suing out and the delivery of the writ hereinafter next mentioned to the said Paul and Charles, being sheriffs as aforesaid, at Westminster, in the said county of Middlesex, was and still is indebted to the said Richard in a large sum of money, to wit, in the sum of one hundred and thirty-nine pounds, of lawful money of Great Britain £: (a) And whereas, by the course and custom of the court of our lord the king, before the king himself here, a writ of *latitat*, sued out after the end of any term, and before the next ensuing term, is supposed to have issued out of the said court here within the term then preceding: And whereas the said Richard afterwards, and after the twelfth day of February, the same being the last day of Hilary Term, in the twenty-seventh year of the reign of our said lord the now king, and after the said John became indebted to the said Richard as aforesaid, and before the next ensuing term, to wit, on the fifth of March, in the year of Our Lord 1787, for the recovery of the said sum of one hundred and thirty-nine pounds so due and owing to him as aforesaid, prosecuted out of the court of our said lord the king, before the king himself (the said court then and still being at Westminster, in the said county of Middlesex), a certain writ of our said lord the king called a *latitat*, directed to the said sheriffs of London, and witnessed the said twelfth

(a) The debt accrued to plaintiff in as of last day of Hilary Term preceding Hilary Vacation, and *latitat* was tested ceding.

day of February, being the last day of the term next preceding the time of suing out the said writ, by which said writ, amongst other things, our said lord the king commanded the said sheriffs that they should take the said John Gilbert, if he should be found in their bailiwick, and safely keep him, so that they might have his body before our said lord the king at Westminster on Wednesday next after fifteen days from the day of Easter, to answer to the said Richard in a plea of trespass, and also to a bill of the said Richard against the said John for two hundred pounds upon promises, and that the said sheriffs should have there then that writ, which said writ was then and there duly indorsed for bail by affidavit made, affiled according to the form of the statute in such case made and provided, for one hundred pounds and upwards, which said writ was so as aforesaid sued and prosecuted, to the intent that the said John might be arrested and taken †, and which said writ, so indorsed for bail as aforesaid, and sued and prosecuted as aforesaid, afterwards, and before the return thereof, to wit, on the fifteenth of March 1787 aforesaid, at Westminster aforesaid, in the county aforesaid, was delivered by the said Richard to the said Paul Le Mesurier, esquire, and Charles Higgins, esquire, who then and continually from thence until and at and after the return of the said writ, were, and still are sheriffs of London aforesaid, to be executed in due form of law: And the said Paul and Charles, so being sheriffs of London as aforesaid, afterwards, and before the return of the said last-mentioned writ, to wit, on the same day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, took and arrested the said John by his body, and had him in custody there for the cause aforesaid; nevertheless the said Paul and Charles, not regarding the duty of their said office of sheriffs of London aforesaid, but wrongfully and injuriously contriving and intending to deceive the said Richard, and also to hinder the proceedings of the said Richard in his suit against the said John, and to deprive him of his remedy for the recovery of the money due and owing to him the said Richard from the said John as aforesaid, afterwards, to wit, on the same day and year last aforesaid (the said Richard not being paid or satisfied the said money so due and owing to him as aforesaid), without the licence and against the will of the said Richard, and without any legal authority whatsoever, voluntarily, and wrongfully, and injuriously permitted and suffered the said John, being in their custody as aforesaid, to escape out of their said custody, and to go at large whither he would, to wit, at Westminster aforesaid, in the county aforesaid; and the said Paul and Charles so being sheriffs as aforesaid, at the return of the said writ, falsely and deceitfully returned in the said last-mentioned writ to the court here that the said John was not found in their bailiwick; and the said John did not, at the return of the said writ, or at any other time, appear in the said court of our said lord the king before the king-himself here, to wit, at Westminster aforesaid, to answer to the said Richard in the plea aforesaid, by reason whereof the said Richard was and is deprived

2d Count, that having J. G. in view, they neglected to arrest him, and returned non est inventus.

deprived of the means of the recovery of the said sum of money so due and owing to him as aforesaid, and has wholly lost the same, to wit, at Westminster aforesaid, in the county aforesaid: And whereas also the said John, before and at the time of the suing out and delivery of the writ hereinafter mentioned to the said Paul and Charles, being sheriffs as aforesaid, at Westminster, in the county of Middlesex, was and still is indebted to the said Richard in another large sum of money, to wit, in the sum of other one hundred and thirty-nine pounds of like lawful money [same as in the first Count from this † to this †], and which said last-mentioned writ afterwards, and before the return thereof, to wit, on the said fifth of March 1787, at, &c. was delivered by the said Richard to the said Paul and Charles, then, and continually from thence until and at and after the return of the said last-mentioned writ, were and still are sheriffs of London as aforesaid, afterwards, and before the return of the said last-mentioned writ, to wit, on the same day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, had notice and information of the said John being within their said bailiwick, and had the said John in their view and presence within their said bailiwick, so that they the said Paul and Charles, so being sheriffs as aforesaid, if they had been minded or desirous so to do, could and might then and there have taken and arrested the said John by his body by virtue of the said last-mentioned writ; nevertheless the said Paul and Charles, so being sheriffs as aforesaid, not regarding the duty of their said office of sheriffs of London aforesaid, but contriving and intending to deceive and defraud the said Richard, and also to hinder the proceedings of the said Richard in his suit against the said John, and to deprive him of his remedy for the recovery of the said sum of money so due and owing from him the said John to the said Richard as last aforesaid, did not take or arrest the said John by his body according to the duty of their said office and the exigency of the said last-mentioned writ as they ought to have done, but the said Paul and Charles, and each of them, wilfully neglected the execution of the said last-mentioned writ, they the said Paul and Charles, so being sheriffs as aforesaid, falsely and deceitfully returned on the said last-mentioned writ to the said court of our said lord the king, before the king himself (the same court then and still being at Westminster aforesaid, in the said county of Middlesex), that the said John was not found in their bailiwick, to the great injury and damage of the said Richard; and the said John did not appear in the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, at the return of the said last-mentioned writ, or at any other time, to answer to the said Richard in the plea last aforesaid; by reason whereof the said Richard was and is deprived of the means of the recovery of the said last-mentioned sum of money so due and owing to him as last aforesaid, and has wholly lost the same, to wit, at, &c.; to the damage of the said Richard of one thousand pounds; and therefore he brings suit, &c. Pledges, &c.

Drawn by J. GRAHAM.
MIDDLE-

MIDDLESEX, to wit. John Barnard, late of, &c. and sir R. Goodschall, late of, &c. sheriffs of Middlesex, were attached to answer G. Graham of a plea of trespass on the case, &c; and whereupon the said G. by A. B. his attorney, complains, that whereas on the third of October, &c. a certain writ of our said lord the king called a *capias ad respondendum*, issued out of his majesty's court of common pleas here, to wit, at Westminster, in the said county of Middlesex, at the suit of one J. Ord against one B. Arrington, directed to the then sheriffs of Middlesex, by which said writ the said lord the king commanded the said sheriff of Middlesex to take the said B. Arrington, &c. [here set out the writ], which said writ afterwards, and before the return thereof, to wit, on the first of November, at Westminster aforesaid, was delivered to the said plaintiffs, so being sheriffs of the county of Middlesex aforesaid, to be executed in due form of law; yet the said plaintiffs, so being sheriffs of the said county of Middlesex, not minding the duty of the said office of sheriff of the said county, but falsely and maliciously contriving and intending to oppress, vex, disturb, and damnify the said G. and to bring the said G. into the contempt of our sovereign lord the king, and of this court here, and to cause the said G. to be wrongfully imprisoned, and to be kept and detained in prison, and to impoverish him, afterwards, to wit, at the return of the said writ, that is to say, on the morrow of Saint Martin now last past, falsely, deceitfully, and fraudulently returned and gave answer to the then justice of his majesty's court here of, upon, and concerning the said writ, that by virtue of the said writ he the said sheriff made his warrant directed to W. B. W. G. and P. G. his bailiff of the hundred of O. in the said county of the said sheriffs, jointly and severally to take and arrest the said B. A. in the said writ named; by virtue of which said warrant the said W. B. afterwards, and before the return of the said writ, to wit, on the third of November, in the year aforesaid, at the parish of Saint Clement Danes, within the said hundred of O. in the bailiwick of the said sheriffs, did take and arrest the said B. A. according to the command of the said writ, and then and there kept him in custody until the said G. Graham and divers other persons unknown to him the said sheriff and the said W. B. at Saint Clement Danes aforesaid, with force and arms, in and upon the said W. B. bailiff aforesaid of the said sheriff, made an assault, and beat, wounded, and ill treated him, and then and there rescued, and each and every of them did then and there rescue the said B. out of the custody of the said W. B. bailiff of the said sheriffs as aforesaid, and against the will of the said sheriff, and against the will and without the consent of the said W. B. and him the said B. A. did permit to go at large where he pleased, and that the said B. A. did then and there, with force and arms, rescue himself and escape out of the custody of the said W. B. the said sheriff's bailiff, against the will of the said sheriffs, and against the will and consent of the said W. B. and against the peace of our said sovereign lord the king; and that afterwards, and before

Declaration against the sheriffs of Middlesex for returning to a *capias ad respondendum* that plaintiff rescued the person arrested, upon which an attachment issued against plaintiff, and he was imprisoned and put to great expence.

before the return of the said writ, the said B. A. was not found in the said sheriffs' bailiwick, and that therefore the said sheriffs could not have the body of the said B. A. before the king's justices at the day and place in the said writ mentioned as by the said writ he was commanded, as by the said writ and return thereof now remaining, on record affiled with the keeper of the writs of his majesty's court here, may more fully and at large appear: Whereas in truth and in fact the said G. was not, nor is any ways guilty of the said premises above by the return of the said writ laid to his charge, or any part thereof; by means of which false, fraudulent, and deceitful return, afterwards, to wit, in Hilary Term now last past, a certain writ of our said lord the king called an attachment issued out of this court against the said G. G. directed to the said sheriffs of Middlesex, whereby the said sheriff was commanded to take the said G. G. before the said justices of our said lord the king at Westminster in eight days of the Purification of the Blessed Virgin Mary then next ensuing, to answer to our said lord the king of certain trespasses, rescues, and contempts by him the said sheriff, certified before the king's said justices at Westminster on the morrow of Saint Martin last past, &c. as by the said writ now remaining of record more fully appears; by virtue of which said last-mentioned writ the said G. G. afterwards, to wit, on the second of February, in the year aforesaid, at the parish of Saint Clement Danes, in the county aforesaid, by the said sheriff, was taken and arrested by his said body, and imprisoned, and kept and detained in prison by the said sheriffs until the said G. G. afterwards, to wit, on the ninth of February, in the year aforesaid, at Westminster aforesaid, was duly discharged out of the custody of the said sheriff by the justices of his majesty's court here, and by reason of the premises he the said G. G. was and is much hurt, prejudiced, damaged, vexed, molested, and disturbed, and was forced to lay out and expend divers large sums of money, in the whole amounting to the sum of fifty pounds, in and about his obtaining his enlargement from his said imprisonment, and in and about his defence in the premises, to wit, at, &c.; to the damage, &c.

Drawn by J. GRAHAM.

MIDDLESEX, to wit. John Lethbridge, esquire, sheriff of the county of Somerset, was attached to answer John Stacie in a plea of trespass on the case; and thereupon the said J. S. by A. B. his attorney, complains; for that whereas he the said J. S. heretofore, to wit, in Michaelmas Term, in the sixteenth year of the reign of our lord the now king, in his majesty's court, before sir William De Grey, knight, and his brethren, then his majesty's justices of the bench at Westminster, by the consideration of the said court, recovered against one sir Charles Warwick Bamfylde, baronet, by the name and addition of Charles Warwick Bamfylde, late of, &c. as well a certain debt of two thousand pounds as also sixty-three shillings, which in and by the said court were awarded

Declaration against a sheriff for making a false return, whereby plaintiff lost the opportunity of recovering his debt and damages on a judgment he had recovered.

awarded to the said J. S. for his damages which he had sustained as well by reason of the detaining of the said debt as for his costs and charges by him about his suit in that behalf expended, whereof the said sir C. W. B. was convicted, as by the record and proceedings thereof, still remaining in his majesty's court of the bench here, to wit, at W. in the said county of Middlesex, more fully appears; which said judgment still remains in full force, not reversed, annulled, paid off, or satisfied; and the said judgment so being in force and unsatisfied, he the said J. S. for the obtaining of his said debt and damages so by him recovered as aforesaid (1), afterwards, to wit, on, &c. in the twenty-ninth year of the reign of our lord the now king, sued and prosecuted out of his majesty's court of the bench here a certain writ of our said lord the king called *an alias non omittas testatum fieri facias* of and upon the said judgment, directed to the sheriff of the said county of S. by which said writ our said lord the king commanded the said sheriff as before he had been commanded, that he should omit not by reason of any liberty in his bailiwick, but that he should cause to be made of the goods and chattels of the said sir C. W. B. the said debt and damages so recovered by the said J. S. as aforesaid, and that he the said sheriff should have that money before our said lord the king's justices at Westminster on, &c. to render to the said J. S. for his said debt and damages whereof the said sir W. B. was convicted as aforesaid, and that the said sheriff should have there that writ, which said writ afterwards, and before the delivery thereof, to wit, on, &c. at, &c. was delivered to the said defendant, who then, and from thence until and at and after the return of the said writ, was sheriff of the said county of S. to be executed in due form of law (2): And the said J. S. avers, that the said sir C. W. B. at the time of the delivery of the said last-mentioned writ to the said defendant, so being sheriff of the said county of S. as aforesaid, for such execution thereof as aforesaid, and afterwards, and between that time and the return of the said writ, had divers goods and chattels in the bailiwick of the said sheriff of the said county of S. to a large value, to wit, to the value of the debt and damages aforesaid (3), whereof the said defendant, as such sheriff as aforesaid, could, might, and ought to have made and levied, and caused to be made and levied the said debt and damages (4), whereof the said J. S. then and there had due notice; yet the said defendant, so then and there being such sheriff as aforesaid, not regarding the duty of his said office of sheriff of the said county of S. but contriving and fraudulently intending to hurt and injure the said J. S. in this behalf, and to deprive him of his aforesaid debt and damages (5), and to cause him wholly to lose the same, did not make or levy, or cause to be made or levied of the goods and chattels of the said sir C. W. B. or of any other levied as aforesaid" (4) "money so by such indorsement on the said last-mentioned writ as aforesaid directed to be levied as aforesaid" (5) "so much of his aforesaid damages as by the said indorsement so made on the said last-mentioned writ as aforesaid was so directed to be levied as aforesaid"

(1) "having execution thereof"

(2) "with a certain indorsement thereon made, directing the said sheriff to levy, by virtue of the said last-mentioned writ, nine hundred and fifty-seven pounds, besides the sheriff's poundage, officers fees, and other incidental expenses"

(3) "money so by the said indorsement on the said last-mentioned writ directed to be levied"

goods

goods and chattels in his the said sheriff's bailiwick, the said debt and damages, (6) or any part thereof, but omitted and neglected so to do, and therein wholly failed and made default, and at the return of the said writ, to wit, on, &c. falsely and deceitfully returned upon the said writ to our said lord the king's justices of the bench at Westminster aforesaid, in the said county of Middlesex, that the said sir C. W. B. had not any goods and chattels within his the said sheriff's bailiwick whereof he could cause to be made the debt and damages in the said writ mentioned, or any part thereof, as by the said writ and return thereof now remaining of record in the said court of our said lord the king of the bench here, to wit, at Westminster aforesaid, in the said county of Middlesex, more fully appears; by means of which said premises the said J.S. was and hath been greatly retarded and hindered from the obtaining of his said debt and damages so by (7) *him in form aforesaid recovered*, and hath wholly lost the same, to wit, at, &c.: And the said last-mentioned writ directed to be levied as aforesaid whereas the said J. S. heretofore, to wit, in Michaelmas term, in the sixteenth year of, &c. before, &c. recovered, &c. &c. [finish this Count same as the first, only omitting what is in Italic and inserting in lieu thereof what is in the margin].

V. LAWES.

AGAINST OFFICERS ACTING IN A PUBLIC MINISTERIAL CAPACITY.

Hilary Term, 24. Geo. III.
LANCASHIRE, to wit. Edward Whiteside complains of William Hodgson, esquire, being in the custody, &c. in a plea of trespass on the case; for that whereas the said plaintiff heretofore, to wit, on the first of August, in the year of Our Lord 1783, was lawfully possessed of a certain large quantity of wheat, that is to say, a certain large quantity of middling British wheat, and of a certain large quantity of such wheat flour, as of his own proper goods and chattels; and being so possessed, he the said plaintiff intended, and was then about to export the said wheat and wheat flour from the port of Carlisle, in the county of Cumberland, to the port of Dublin, in the kingdom of Ireland, and for that purpose had engaged a certain ship or vessel, then lying and being in the said port of Carlisle, and had in due manner shipped and put the said wheat and wheat flour in and on board the said ship or vessel, to wit, at Liverpool, in the said county of Lancaster: And whereas the said defendant, on the day and year aforesaid, and from thence until, and at, and after the committing of the several grievances hereafter mentioned, was the collector of the customs at the said port of Carlisle as aforesaid; † and the said plaintiff, being so possessed of such wheat *and wheat flour* as aforesaid, and being about to export the same as aforesaid, he the said plaintiff, just before the committing of the grievance hereafter

Declaration against the collector of the customs of the port of Carlisle, for refusing to make an entry of goods which plaintiff was going to export, whereby plaintiff was hindered from exporting, and put to expence, &c.

hereafter next-mentioned, to wit, on the day and year aforesaid, at, &c. aforesaid, gave notice of and declared such his intention to export the said wheat *and wheat flour* as aforesaid to the said defendant, as such collector of the customs at the said port of Carlisle as aforesaid, and then and there offered to make the due and proper entry of the said wheat *and wheat flour* for exportation as aforesaid with him the said defendant as such collector of the customs as aforesaid, and then and there requested and required him, as such collector of the customs as aforesaid, to accept and receive, and to take and make such entry of the aforesaid wheat *and wheat flour* for exportation as aforesaid, in order that the same might be exported without being liable to seizure, and in order that he the said plaintiff might become entitled to and receive the bounty payable upon the exportation thereof: And the said plaintiff in fact further saith, that although he the said plaintiff could and might have then and there lawfully exported the said wheat *and wheat flour*, the average price thereof at the public market at the said port of Carlisle, then and on the last market day preceding the aforesaid shipping thereof, not being at or above the price of forty-four shillings per quarter, but under and less than such price; and although the said defendant, according to his duty as such collector of the customs at the said port of Carlisle as aforesaid, ought to have then and there accepted and received, and to have taken and made such entry of the said wheat *and wheat flour* for exportation as aforesaid, so being such collector of the customs at the said port of Carlisle as aforesaid; yet the said defendant, not regarding his duty as such collector at the said port of Carlisle as aforesaid, but contriving and maliciously intending to injure the said plaintiff, and to hinder and prevent him from exporting the said wheat *and wheat flour* as aforesaid, and to deprive him of the bounty and all other benefits and advantages on the exportation thereof, did not when he was so requested and required as aforesaid, or at any other time whatsoever, enter the said wheat *and wheat flour* of him the said plaintiff for exportation as aforesaid, or take, or receive, or suffer, or permit him the said plaintiff to make such entry thereof, but then and there, (1) *and* (1) “and al-
until the exportation of a part thereof as hereafter mentioned, ways after-
 wholly refused so to do; || whereby the said plaintiff became un-wards,”
 able to export the said wheat and wheat flour, and in consequence thereof was obliged to unload the same from and out of the said vessel so by him engaged to export the same as aforesaid, and on that occasion, and in and about the landing, housing, and taking care of and reshipping of the same as hereafter mentioned, was obliged to lay out and expend a large sum of money; and although the said plaintiff did afterwards export the said wheat and wheat flour, and a part of the said wheat so by him shipped for exportation as aforesaid, yet the said plaintiff was, by reason and means, and in consequence of the said defendant's refusing to make such entry as aforesaid, entirely hindered and prevented from exporting the residue of the said wheat, and thereby lost and was deprived of

of the bounty that would have been payable on the said exportation thereof, and was ultimately obliged at a considerable inconvenience and expence, to send the same coastwise to the port of Liverpool, in this kingdom, in another and different vessel than the said vessel so by him engaged as aforesaid, and there to dispose of the said last-mentioned wheat, at and for a much less sum of money than the same would have sold for had it been so exported as aforesaid, and was for a long space of time hindered and prevented from exporting the said wheat flour and wheat so by him exported as aforesaid, and when he so exported the same was obliged to export and transport the same from the said port of Carlisle to the said port of Dublin in another and different vessel, and on occasion, and by reason, and means of his aforesaid engagement for a vessel to export the said wheat and wheat flour so by him intended to be exported as aforesaid, and of the said vessel so by him engaged for that purpose as aforesaid being detained at the said port of Carlisle for the purpose, and in expectation of exporting the said wheat and wheat flour as aforesaid, he the said plaintiff was forced and obliged to pay a large sum of money by way of compensation, satisfaction, and equivalent for the said ship or vessel being so detained as aforesaid, and not being employed in the exportation of the said wheat and wheat flour, according to the aforesaid engagement of him the said plaintiff in that behalf, to

2d Count, loss
of bounty, and
obliged to sell
coastwise.

wit, at, &c. aforesaid: And whereas the said plaintiff heretofore, to wit, on the seventeenth of August 1783 aforesaid, was lawfully possessed of a certain other large quantity of wheat, to wit, two hundred quarters of middling British wheat, as of his own proper goods and chattels; and being so possessed, he the said plaintiff intended, and was then about to export the same last-mentioned wheat from the port of Carlisle aforesaid, to the said port of D. in the kingdom of Ireland, and for that purpose had engaged a certain other ship or vessel, called the Elizabeth, whereof Thomas Rogerson was the captain or commander, then lying and being in the said port of Carlisle, and had in due manner shipped and put the said last-mentioned wheat in and on board the said last-mentioned ship or vessel, to wit, at, &c. aforesaid, &c. [go on as in the first Count from this mark † to this mark ‖, omitting what is in Italic, then proceed as follows]; whereby the said plaintiff was hindered and prevented from, and lost the opportunity of exporting the said last-mentioned wheat of him the said plaintiff from the said port of Carlisle to the said port of Dublin, and was in consequence thereof obliged to send the same coastwise to the port of Liverpool, in this kingdom, and there to sell the same, for a much less sum of money than the same wheat would have produced had the same been exported as aforesaid; whereby and by reason and means of which said several premises he the said plaintiff was not only injured and damnified in respect of the produce of his said last-mentioned wheat in manner aforesaid, but wholly lost the bounty, and all other benefit and advantage that would have arisen and accrued to him on such exportation thereof as aforesaid; and by reason and means

means of the said last-mentioned wheat not being so exported as aforesaid, in the said ship or vessel so by him engaged for that purpose as aforesaid, he the said plaintiff was obliged to pay to the said John Rogerson, the captain or commander of the said last-mentioned ship, &c. a large sum of money, to wit, &c. by way of and as and for a compensation, satisfaction, and equivalent for the said last-mentioned ship or, &c. not being employed in such exportation, and for and on account of extra delay and detention in his carrying the said last-mentioned wheat to the said port of Liverpool, to wit, at, &c. aforesaid: And whereas the said plaintiff heretofore, to wit, on the seventeenth day of August, A. D. 1783 aforesaid, in due manner shipped and put on board a certain other ship or vessel, called the Elizabeth, whereof one Thomas Rogerson was captain or commander, lying and being at the port of Carlisle, a certain other quantity of wheat, to wit, two hundred quarters of middling British wheat of him the said plaintiff, for the purpose of the same being exported in the said last-mentioned ship or vessel from the port of Carlisle to the said port of Dublin, in the kingdom of Ireland, and the said plaintiff was then and there about to make the due and proper entry with the proper officer of his majesty's customs at the said port of Carlisle, to warrant such exportation of the said last-mentioned corn, and although he the said plaintiff could and might have then and there lawfully exported the said last-mentioned wheat, the average price thereof at the public market at the said port of Carlisle; then and on the last market day preceding the said shipping thereof, not being at or above the price of forty-four shillings per quarter, but under and less than such price; yet the said defendant, so being such collector of the customs at the said port of Carlisle as aforesaid, and well knowing all and singular the premises last aforesaid, but further contriving and attempting to injure him the said plaintiff, and to deprive him of the bounty, and all other benefit and advantage, and on such exportation of the said last-mentioned wheat of him the said plaintiff as aforesaid, and otherwise to injure him, whilst the said wheat was so on board the ship or vessel, called, &c. at the said port of Carlisle for the purpose of exportation as aforesaid, and before the said plaintiff had or could enter the same for exportation as aforesaid, to wit, on the day and year last-aforesaid, to wit, at, &c. aforesaid, he the said defendant, as such collector of the customs at the said port of Carlisle, under pretext and pretence of his said office as such collector of the customs at the said port of Carlisle as aforesaid, and under pretext and pretence of having a legal cause for so doing, did wrongfully and maliciously, and without any just, reasonable, or probable cause whatsoever, seize and take possession of, and keep and detain, and cause and procure possession of the said last-mentioned ship or vessel, called the Elizabeth, to be seized and taken, and the said last-mentioned ship or vessel to be kept and detained at and in, and to be hindered and prevented from sailing from the said port of C. for a long space of time then next following, and until the aver-

3d Count, for detaining a vessel in which plaintiff had loaded goods for exportation, until the average price of such goods arose to an amount higher than they are permitted to be exported from this kingdom.

age price of such wheat so shipped and put on board the said last-mentioned ship or, &c. by the said plaintiff as aforesaid, at the public market at the said port of C. had arisen and was above the price at which such wheat was and is allowed to be exported from this kingdom, to wit, at, &c. aforesaid; whereby the said plaintiff was hindered and prevented from, and lost the opportunity of exporting the said last-mentioned wheat of him the said plaintiff from the said port of C. to the aforesaid port of D. and was in consequence obliged to send the same coastwise from the said port of C. to the said port of L. in this kingdom, and there to sell the same for a much less sum of money than the said wheat would have produced had the same been so exported as aforesaid; whereby and by reason and means of which said several premises, he the said plaintiff was not only injured and damnified in respect of the produce of the said last-mentioned wheat in manner aforesaid, but wholly lost the bounty and all other benefit and advantage that would have arisen and accrued to him on such exportation thereof as aforesaid; and by reason and means of the said wheat not being so exported in the said last mentioned vessel, called the Elizabeth, in which he the said plaintiff had, before the committing of the said last-mentioned grievance by the said defendant, engaged to export the said last-mentioned wheat to the said port of Dublin, he the said plaintiff was obliged to pay to the said T. Rogerson, the captain or commander of the said last-mentioned ship or vessel, a large sum of money, to wit, the sum of five pounds five shillings, by way of, and as and for a compensation, satisfaction, and equivalent, for the said last-mentioned ship or vessel not being employed in such exportation, and for and on account of extraordinary delay and detention in her carrying the said last-mentioned wheat to the said port of Liverpool as aforesaid, to the damage of the said plaintiff of five hundred pounds, for which he brings his suit, &c. Pledges, &c.

V. LAWES.

Declaration by plaintiff, a brewer, against defendant, an excise officer, for charging plaintiff a second time with the duty of excise on a quantity of strong beer after his having paid it to another officer, who had gauged the liquor and taken the true quantity; whereby the plaintiff was obliged to petition the commissioners to be released from the overcharge, whereby he was put to great expence. (a) Erected pursuant to 12. Car. 2. c. 24. and perpetuated by 5. W. and M. c. 20.

LONDON, to wit. Samuel Whitbread, esquire, complains of John Chapman, being, &c.; for that whereas he the said Samuel, long before and at the time of the committing of the grievance hereafter next-mentioned, was, and from thence hitherto hath been, and still is, a common brewer of beer and ale for sale, and the business of a brewer for and during all that time hath followed, exercised, and carried on in a certain brewhouse of him the said S. situate within the compass and limits of the *chief office* (a) in London for the duties of excise, to wit, at London aforesaid, in the parish of St. Giles without Cripplegate, in the ward of Cripplegate Without; and the said Samuel, being such brewer as aforesaid, he the said Samuel, before the time of the committing of the grievance hereafter next-mentioned, to wit, on, &c. was the true quantity; whereby the plaintiff was obliged to petition the commissioners to be released from the overcharge, whereby he was put to great expence. (a) Erected pursuant to 12. Car. 2. c. 24. and perpetuated by 5. W. and M. c. 20.

lawfully

lawfully possessed of and in divers, to wit, fourteen barrels, one firkin, and one gallon of a certain exciseable liquor called *strong beer*, part and parcel of a certain guile of strong beer theretofore brewed and made by the said Samuel in his said brewhouse, and which said strong beer had been theretofore guaged and taken an account of by the proper officer of and belonging to the excise of our lord the now king, and the excise duty thereon had also been duly secured and charged, and the said strong beer then remained *unused and unaltered* in the said brewhouse of the said Samuel, that is to say, in a certain vessel there called a working tun, to wit, at, &c.: And whereas the said Samuel, before and on the day and year aforesaid, was lawfully possessed of and in a certain large quantity of exciseable liquor, called wort, which had been then lately brewed and made by him the said Samuel in his said brewhouse, that is to say, for the purpose of being made into strong beer, and then being in the said brewhouse, that is to say, in certain vessels there called backs, and then being subject and liable to be charged with the payment of the duty of excise in that case provided, and which said liquor called wort, he the said Samuel then and there intended, and was about to let down from and out of the said vessels called backs, into the said vessel called a working tun, and therein to mix the same with the said strong beer, so therein being as aforesaid, whereby the said liquor, called wort, would come under the denomination of the said exciseable liquor called strong beer, and would be rendered subject and liable to be charged with and to the payment of the duty of excise on such liquor, to wit, at, &c.: And whereas the said John, before and on the day and year aforesaid, and at the time of the committing of the grievance hereafter next-mentioned was, and from thence hitherto hath been, and still is, an officer of and belonging to the excise of our lord the now king, to wit, an officer called a surveyor, to wit, at London aforesaid; and the said Samuel being such brewer, and being so possessed and intending as aforesaid, and the said John being such officer as aforesaid, afterwards, and before the committing the grievance hereafter next mentioned, to wit, on, &c. one W. M. then being an officer of and belonging to the said-excise of our lord the now king, to wit, an officer called a guager, as such officer, came into the said brewhouse of the said Samuel, and the said W. M. so being such officer as aforesaid, and so being in the said brewhouse of the said Samuel and the said intention of the said Samuel being then and there made known to the said W. M. so being such officer as aforesaid, he the said W. M. as such officer as aforesaid, and in order to ascertain the exact duty of excise that would be payable by the said Samuel upon his said intention being carried into execution, *did, previous to the said intention of the said Samuel being carried into execution*, that is to say, on the day and year aforesaid, *guage as well the said liquor called wort*, whilst the same remained and was *in the said vessels called backs*, as the said strong beer *is* being in the said vessel called a working tun as aforesaid, and thereby then and there well knew the several contents thereof; and

This allegation seems essentially necessary, for if the old beer be in any manner altered it is to be a second time charged.

8. & 9. Wm. 3. c. 19. l. 3.

This was done in pursuance of the 21st article of the Brewery Instructions.

Otherwise the
strong beer is
liable to be a
second time
charged.
8. 9. W 3 c. 19.
and 5. Geo. 3.
c. 43.

Vide 12. Car. 2.
c. 23. f. 19. and
15. Car. 2 c. 11.
f. 5

This averment
arises out of 1.
W. & M. ft. 1.
c. 24. f. 7.

thereupon afterwards, and whilst the said W. M. so being such officer as aforesaid, was in the said brewhouse of him the said Samuel, to wit on the day and year aforesaid, the said exciseable liquor called *wort* of the said Samuel, so being in the said vessels called backs as aforesaid, *was in the sight and view of the said W. M. so being such officer as aforesaid, let down from the said vessels called backs, into the said vessel called a working tun, and therein mixed with strong beer, so therein being and contained as aforesaid, and thereby came under the denomination of the said exciseable liquor called strong beer, and became subject and liable to be charged with and to the payment of the excise duty on such liquor, to wit, at, &c.:* And the said Samuel further saith, that the said W. M. so being such officer as aforesaid, according to his duty as such officer, did, after the letting down of the said liquor called *wort* as aforesaid, from and out of the said vessels called backs as aforesaid, in which the same was so contained as aforesaid, and mixing the same as aforesaid, to wit, on, &c. gauge the whole of the then contents of the said vessel called a working tun, and upon such gauge, so much of the said then contents of the said vessel called a working tun, as had been so let down from and out of the aforesaid vessels called backs as aforesaid, were by the said W. M. so being such officer as aforesaid, ascertained to be the true quantity of the said exciseable liquor called strong beer, whereon the said Samuel, at the time of the making of the said last-mentioned gauge, was subject and liable to be charged with, and to the payment of the duty of excise, to wit, at, &c.; and thereupon the said W. M. so being such officer as aforesaid, afterwards, to wit, on, &c. that is to say, in and by a return in writing by him the said W. M. as such officer as aforesaid, then made to the commissioners and governors duly nominated, constituted, and appointed for the receipt and management of the duties of excise, arising, or to arise in England, Wales, and Berwick-upon-Tweed, that is to say, at the chief office in London for the duties of excise, to wit, at, &c. did return the said quantity of the said exciseable liquor, called strong beer last-mentioned, as being the true quantity of such liquor, whereon the said Samuel, at the time of the taking and making of the said last-mentioned gauge by him the said W. M. as aforesaid, and by the said return of him the said W. M. as such officer as aforesaid, was liable and subject to be charged with and to the payment of the duty of excise, to wit, at, &c.:

And the said Samuel in fact saith, that he the said Samuel *ought not upon or by reason of the said return so made by the said W. M. as aforesaid, to have been charged with any further duty of excise on the aforesaid fourteen barrels, one firkin, and one gallon of the said exciseable liquor called strong beer, on which the said duty had been so as aforesaid previously secured and charged; yet the said John, so being such officer as aforesaid, not regarding his duty as such officer as aforesaid, but neglecting the same, and contriving and maliciously intending, wrongfully and unjustly to injure, prejudice, and damnify the said Samuel, and to put him to great expence, and to vex, harass,*

and aggrieve him, after the making of the said return by the said W. M. as aforesaid, and notwithstanding the same, to wit, on, &c. did again charge the said Samuel, and cause him to be again charged with the duty of excise on the aforesaid fourteen barrels, one firkin, one gallon, of the said exciseable liquor called strong beer, whereon the said duty was so secured and charged as aforesaid, and thereby wrongfully and unjustly overcharged the said Samuel in the duty of excise by him payable at the time of the taking and making of the said last-mentioned guage by him the said W. M. as such officer as aforesaid, to a large amount, to wit, to the amount of four pounds nineteen shillings one penny three farthings; whereby he the said Samuel was afterwards, to wit, on, &c. forced and obliged to, and did exhibit to the commissioners and governors aforesaid, that is to say, at the said chief office in London for the duties of excise, a certain complaint in writing, thereby complaining of the said overcharge so made by the said John in respect of the duty of excise to be paid by him the said Samuel as aforesaid, and praying that he might be relieved of and from the payment of such duty so overcharged aforesaid, and he the said Samuel was forced and obliged to, and did prosecute the said complaint so by him exhibited as aforesaid, from thence until and upon the twenty-second of February 1770, when the same came on to be heard and determined by and before the commissioners and governors aforesaid, who upon hearing thereof, and upon examination upon oath of the witnesses produced before them touching and concerning the same, and upon the matter of such complaint being duly made out and proved, did relieve the said Samuel of and from the payment of the said duty of excise so overcharged and complained of as aforesaid; and the said Samuel was thereof and therefrom in due manner, and according to due course of law, discharged, and the said complaint was then and there duly ended and determined; by reason of which several premises, he the said Samuel was greatly injured, and was forced and obliged to lay out and expend, and did lay out and expend a large sum of money, to wit, the sum of fifty pounds, in about the prosecution of the said complaint, and was for a long space of time, to wit, for the space of one month, greatly hindered, prevented, and obstructed, in carrying on his necessary affairs and business by him during that time to be carried on, and was, and hath been, and is, on occasion of the said premises, otherwise greatly injured and damnified, to wit, at, &c.

And whereas, [state plaintiff to be a brewer as in the first Count, then proceed thus]; and whereas the said John, before and at the time of the committing of the grievance hereafter next-mentioned, was, and from thence hitherto hath been, and still is, an officer of and belonging to the excise of our lord the now king, to wit, an officer called a surveyor; and the said Samuel being such brewer, and the said John being such officer as aforesaid, he the said Samuel, before the committing of the grievance hereafter next-mentioned, to wit, on, &c. was lawfully possessed of and in

H h 3

a certain

Vide 1. W. and M c. 24 s. 13. which gives this summary mode of proceedings.

2d Count, a larger number of barrels guaged before, of which this was part.

a certain large quantity, to wit, five hundred and ninety-nine barrels and four gallons of a certain exciseable liquor called strong beer, a great part, to wit, fourteen barrels, one firkin, and one gallon thereof having been theretofore guaged and taken a proper account of by a guager of and belonging to the excise of our lord the now king, and the excise duty thereon duly secured and charged, and not then liable or subject to be charged with and to the payment of any further excise duty, and the residue of the said exciseable liquor, called strong beer of him the said Samuel, then and there being subject and liable to be charged with and to the payment of the duty of excise in that case provided, to wit, at, &c.; and the said Samuel being so possessed as aforesaid; afterwards, and whilst he was so possessed, and before the committing of the grievance hereafter next-mentioned, to wit, on, &c. the said five hundred and ninety-nine barrels and four gallons of strong beer of him the said Samuel, were duly guaged by a guager of and belonging to the said excise of our said lord the king, and so much thereof as was so liable to be charged with and to the payment of the duty of excise as aforesaid, was, by such guager as aforesaid, duly returned and reported to the commissioners and governors duly constituted, nominated, and appointed for the receipt and management of the duties of excise, arising and to arise in England, Wales, and Berwick-upon-Tweed, that is to say, at the said chief office in London for the duties of excise, to the intent that the said Samuel might be charged with the payment of the duty of excise thereon payable, to wit, at L. aforesaid: And the said Samuel in fact saith, that the said John, so being such officer as aforesaid, ought, upon the making of such return and report as aforesaid, to have charged the said Samuel with the payment of the duty of excise on only so much of the said five hundred and ninety-nine barrels and four gallons of the said exciseable liquor called strong beer, as had been and was so returned and reported as aforesaid, as being liable and subject to be charged with such duty, and not on the whole of the said last-mentioned exciseable liquor called strong beer; yet the said John, so being such officer as aforesaid, and well knowing all and singular the premises aforesaid, and not regarding his duty as such officer as aforesaid, but contriving and maliciously intending to injure the said Samuel, and to put him to great expence, did, after the making of such return and report by the guager of the said excise of our said lord the king as aforesaid, and notwithstanding the same, to wit, on, &c. wrongfully and unjustly charge the said Samuel with, and call upon him, and did cause and procure to be charged with, and to be called upon for the payment of the duty of excise on the said last-mentioned quantity of the said exciseable liquor called strong beer, and did thereby then and there overcharge him the said Samuel in respect to the duty of excise payable by him on the said return and report of the said guager so made as aforesaid, to a large amount, to wit, to the amount of four pounds nineteen shillings and a penny three farthings, being the duty on so much of

of the aforefaid last-mentioned quantity of the faid exciseable liquor called strong beer, whereon the faid duty of excise had been so secured and charged as aforefaid; by means whereof he the faid S. was afterwards, and before the exhibiting of the bill of him the faid S. to wit, on, &c. forced and obliged to, and did exhibit, &c. [similar conclusion to the first Count]: And whereas [state 3d Count, not
 plaintiff to be a brewer, defendant a surveyor, and that plaintiff tarrying at plain-
 being such brewer, and defendant such officer, he plaintiff, on, &c. tiff's request to
 was possessed of eleven barrels, one firkin, and two gallons of strong see wort, which
 beer, whereon the duty had been charged, and of a large quantity had been guag-
 of wort liable to be charged, as in the first Count, then proceed ed, let down,
 thus]; and the faid Samuel, being such brewer as aforefaid, and whereby, &c.
 being so possessed as aforefaid, afterwards, and whilst he was so
 possessed, and before the committing of the grievance hereafter
 next-mentioned, to wit, on, &c. one W. C. then, and from
 thence until, and at, and after the committing of the grievance
 hereafter next mentioned, being an officer of and belonging to the
 excise of our lord the now king, to wit, an officer called a guager,
 came into the faid brewhouse of the faid Samuel, for the purpose of
 guaging and taking an account of the exciseable liquor then in the
 possession of the faid Samuel, and in order to ascertain how much
 excise duty he the faid Samuel was then subject and liable to be
 charged with and to the payment of; and the faid W. C. being
 such officer as aforefaid, and so being in the faid brewhouse of the
 faid Samuel, he the faid W. C. did guage as well the faid excise-
 able liquor called wort, as the faid liquor called strong beer, of
 the faid Samuel, so being in the several and respective vessels
 aforefaid, and thereby well knew the several quantities thereof,
 and that he the faid Samuel was not subject or liable to be charged
 with and to the payment of any further excise duty on the faid
 liquor called strong beer, than as thereon secured and charged as
 aforefaid; and thereupon afterwards, and whilst the faid W. C.
 so being such officer as aforefaid, was in the faid brewhouse of the
 faid S. as aforefaid, he the faid S. being about to let down the faid
 liquor called wort from and out of the faid vessels called backs,
 into the faid vessel called a working tun, and therein to mix the
 same with the faid liquor called strong beer, so therein being as
 aforefaid, did require the faid W. C. so being such officer as afore-
 faid, to tarry in the faid brewhouse of him the faid S. for the pur-
 pose of seeing, and to see the faid liquor called wort so let down
 and mixed, to the intent that he the faid Samuel might not be a
 second time charged with the payment of the duty of excise on the
 faid liquor called strong beer, by reason of the faid liquor called
 wort, being let down to and mixed therewith otherwise than in the
 sight and view of a guager of the faid excise of our lord the now
 king, and the faid W. C. so being such officer as aforefaid, ac-
 cording to his duty as such officer, ought to have tarried in the
 faid brewhouse of the faid Samuel for the purpose aforefaid, to wit,
 at L. aforefaid; yet the faid John, well knowing all and singular
 the premises aforefaid, but contriving and maliciously intending

to injure the said Samuel, and to cause and procure him to be a second time charged with, and to be called upon for the payment of the duty of excise on the said liquor called strong beer, so contained in the said vessel called a working tun, as aforesaid, by reason of the said liquor called wort, being let down and mixed therewith otherwise than in the sight and view of a guager of and belonging to the said excise of our lord the king, and also to vex, harass, and aggrieve him the said Samuel, and to put him to great expence, did then and there, to wit, on, &c. maliciously, wrongfully, and unjustly cause and procure him the said W. C. to be such officer as aforesaid, to refuse and neglect to tarry in the said brewhouse of the said Samuel for the purpose aforesaid, and on the contrary thereof, to depart and leave the said brewhouse of the said Samuel without seeing the said liquor, called wort, let down to and mixed with the liquor called strong beer, contrary to the duty of the said office of the said W. C. to wit, at, &c.; whereby he the said Samuel, for the convenient and necessary carrying on of his said business of a brewer, and for the preservation of the said liquor called wort, and to prevent the same from being lessened in value and spoiled, was afterwards, to wit, on, &c. forced and obliged to, and did let down the said liquor called wort, from and out of the said vessels called backs, into the said vessel called a working tun, and did therein mix the same with the said liquor called strong beer, otherwise than in the sight and view and without the presence of a guager, or of any other officer of and belonging to the excise of our lord the king; by means whereof he the said Samuel was afterwards, to wit, on, &c. a second time charged with and called upon for the payment of the excise duty on the said liquor called strong beer, and was thereby overcharged in respect to the duty of excise then and there payable and to be paid by him, the said Samuel as such brewer as aforesaid, to a large amount, to wit, to the amount of three pounds sixteen shillings; and thereupon he the said Samuel was afterwards, to wit, on, &c. forced and obliged to, and did exhibit to the commissioners and governors duly nominated, constituted, and appointed for the receipt and management of the duties of excise, arising and to arise in England, &c. [like conclusion as to the first Count]; And whereas, &c. &c. [a general Count like the second Count, only stating the overcharge to have been made upon the beer mentioned in the last Count]; And whereas, &c. [state plaintiff to be a brewer, and to be possessed of fifteen barrels, three firkins and two gallons of beer on which the duty had been charged, &c. and of a large quantity of wort liable to be charged, &c. in the backs, which he intended to let down, &c. as in the first Count, then state defendant to be a guager and an officer of and belonging to the excise, called a surveyor, as in first Count, then proceed as follows]; and the said John, being such guager and officer as aforesaid, and the said Samuel, being such brewer, and possessed, and intending as aforesaid, he the said Samuel did afterwards, to wit, on, &c. give notice unto and require the said John, so being

4th Count.

5th Count.

being such gauger and officer as aforesaid to come in person, or to send some other gauger and officer of and belonging to the said excise, to the said brewhouse of the said Samuel, in the evening of the said eighteenth day of March, that is to say, at eight o'clock in the evening of the same day, for the purpose of seeing and to see the said liquor, called wort, let down from and out of the said vessels called backs, into the said vessel called a working tun, and therein mixed with the said liquor called strong beer, to the intent that he the said Samuel might not be a second time charged with and to the payment of the duty of excise on the said liquor called strong beer, by reason of the said liquor called wort, being let down to and mixed therewith as aforesaid, otherwise than in the sight and view of a gauger and officer of and belonging to the excise of our lord the king, to wit, at L. aforesaid; And the said Samuel in fact further saith, that the said John, so being such gauger and officer as aforesaid, according to his duty as such officer and gauger as aforesaid, ought to have come in person, or ought to have sent some other gauger and officer of the excise to the said brewhouse of the said Samuel, at the time and for the purpose in the said notice specified, according to the tenor and effect of the said notice, to wit, at L. aforesaid; yet the said John, so being such gauger and officer as aforesaid, not regarding his duty as such gauger and officer, but neglecting the same, and contriving and maliciously intending, wrongfully and unjustly to injure, prejudice, and damnify the said Samuel, and to render him subject and liable to be a second time charged with the payment of the duty of excise on the said liquor called strong beer, and also to vex, harass, and aggrieve him, and to put him to great expence, did not, at eight o'clock in the evening, or at any hour or other time in the evening of the said eighteenth day of March, in the year aforesaid, come in person, nor did the said John send any other gauger and officer of the excise of our lord the now king, to the said brewhouse of the said Samuel, for the purpose whereof he the said John had so had notice as aforesaid, but therein wholly failed and made default, and neglected so to do, || to wit, at L. aforesaid; whereby the said Samuel, for the convenient, &c. &c. [as the conclusion to the third Count till you come to this mark †, then proceed thus]; to be paid by him the said Samuel as aforesaid, to a large amount, to wit, to the amount of five pounds nine shillings and sixpence, and was thereupon afterwards, and before the day of exhibiting the bill of the said Samuel, to wit, on, &c. in order to be relieved of and from the payment of the said last-mentioned duty of excise, forced and obliged to exhibit, and did exhibit, &c. [like the conclusion to the first Count, only stating complaint to have been heard on the twenty-eighth of April]: And whereas, &c. [as in 6th Count. the last Count till you come to this mark ‡, only stating the quantity of the wort to be two hundred barrels, then go on thus]; contrary to the duty of him the said John as such gauger and officer as aforesaid; by means whereof the said Samuel could not, at the time when the said wort ought to have been let down from and out

7th Count.

8th Count.

9th Count.

out of the said vessels called backs, into the said vessel called a working tun, to wit, at eight o'clock in the evening of the eighteenth of March, nor until a long time, to wit, until two hours afterwards, when a certain other guager of and belonging to the excise of our lord the king, came into the brewhouse of him the said Samuel, and let down the said liquor called wort, from and out of the said vessels called backs, into the said vessel called a working tun, for the purpose aforesaid, without subjecting and rendering himself liable to be a second time charged with the payment of the duty of excise on the aforesaid liquor called strong beer, by reason of the said before-mentioned wort being let down to and mixed therewith otherwise than in the sight and view, and without the presence of a guager of and belonging to the said excise of our said lord the king; by means whereof he the said Samuel was greatly retarded, hindered, prevented, and obstructed in carrying on of his said business of a brewer, and the said liquor, called wort, was, by means of the several premises aforesaid, greatly damaged, injured, and damnified, to wit, at L. aforesaid: And whereas, &c. [add a general Count upon the overcharge in the 5th Count, in like manner as in the 2d Count]: And whereas, &c. [there was an 8th special Count for consequential damages upon an overcharge on twelve barrels, three firkins, and one gallon on the fourteenth of May 1779, occasioned in like manner as mentioned in 5th Count]: And whereas, &c. [a general Count as 2d Count, upon the overcharge in the last Count.] Damages five hundred pounds. Suit, &c. Pledges, &c.

T. DAVENPORT.

This declaration was drawn by Mr. Lawes; the four first Counts of it were settled by Mr. Serjeant Walker, and the whole approved by Sir T. Davenport. The case was tried at the sittings after Hilary Term, 20. Geo. 3. and verdict for plaintiff, 50l damages. It was contended by the counsel for the defendant, that the overcharges were justifiable upon the

ground of the plaintiff's refusal to declare the length of his guilds in the manner required by the defendant, which he said was warranted by the several statutes relative to that point, but Lord M. was of opinion that the propriety or impropriety of the charges could not be a second time gone into.

Declaration against a justice of the peace, for maliciously convicting plaintiff of having sworn 200 profane oaths, without hearing the plaintiff or his witnesses in his defence, whereby the defendant fined the plaintiff 10l. and on his refusing to pay the money, sent him to prison to hard labour.

SABATIER } SOMERSETSHIRE, to wit. For that whereas
 against } the said T. C. at the several and respective times of
 COWARD. } committing the several and respective wrongs and
 grievances hereinafter mentioned, was, and for divers years last
 past has been, and still is, one of his majesty's justices of the peace
 in and for the said county of S, that is to say, at, &c. in, &c.;
 and whereas also the said R. S. on, &c. in the twenty eighth year
 of the reign of our lord the now king, and A. D. 1780, at, &c.
 in, &c. did personally appear before the said T. C. then and still
 being such justice of the peace as aforesaid, according to an ap-
 pointment before that time made by the said T. C. in this behalf,
 in order to make his defence against a certain charge pretended by
 the

the said T. C. to have been made before him as such justice of the peace aforesaid, against him the said R. S. (1) *of profanely swearing and cursing two hundred profane oaths and curses, upon the information of one A. B. of, &c. in, &c. clerk, made unto him the said T. C. as such justice of the peace as aforesaid, on, &c. A. D. 1780, who upon his oath informed and said, that on Saturday then last, the twenty-third day of that instant, Monday the twenty-fifth, and Tuesday the twenty-sixth days of that instant September, he heard the said R. S. profanely swear and curse two hundred profane oaths and curses at and about his house in S. aforesaid, in these or the like words, viz. "God damn me eternally, God damn me if I do not, and God damn me if I am not a match for them:"* And the said R. S. in fact says, that he the said R. S. was then and there, to wit, on, &c. at, &c. in, &c. ready to make his defence against the said pretended charge before him the said T. C. being such justice of the peace as aforesaid, and certain persons, namely, W. C. &c. did then and there appear before the said T. C. then and there being such justice of the peace as aforesaid, as witnesses for and on the behalf of him the said R. S. upon account of the said pretended charge, and the said T. C. was then and there requested by the said R. S. to hear *the defence of him the said R. S. against the said pretended charge, and to hear the evidence of the said several persons then and there appearing as witnesses in that behalf as aforesaid; yet the said T. C. not regarding the laws of this kingdom and his duty of justice of the peace as aforesaid, but wickedly and maliciously intending to oppress and injure the said R. S. then and there wholly refused to hear the (2) defence of him the said R. S. against the said pretended charge, and to hear the evidence of his said witnesses then and there in that behalf, and did not hear the defence of him the said R. S. against the said pretended charge, nor the evidence of the said several persons then and there appearing as witnesses in that behalf as aforesaid, or either of them, but on the contrary thereof he the said T. C. so being such justice of the peace as aforesaid, further wickedly and maliciously intending to oppress and injure the said R. S. to wit, on, &c. at, &c. in, &c. did unlawfully, wickedly, and maliciously convict the said R. S. of the said pretended charge in the information of the said A. B. hereinbefore mentioned, without having heard the defence of him the said R. S. against the said pretended charge, or having heard the evidence of the said several persons appearing as witnesses in that behalf as aforesaid, or of either of them; and the said T. C. in pursuance of the said conviction, and further intending wickedly and maliciously to oppress and injure the said R. S. to wit, on, &c. at, &c. in, &c. made his certain warrant, sealed with his seal, and directed to the constable of S. in the said county and to the keeper of the house of correction of S. in the said county, by which said warrant reciting, "That whereas R. S. of, &c. in, &c. was and stood convicted that day before him the said T. C. esquire, one of his majesty's justices of the peace for the said county of swearing and cursing two hundred profane oaths and*

(1) "on, &c. that on, &c. &c. of that instant September, he the said R. S. did"

(2) "evidence of the said several persons appearing as witnesses in the defence of the said R. S. against the said last-mentioned pretended charge, or either of them, and did not hear the evidence of the said several persons or either of them, in the defence of the said R. S. against the said last-mentioned pretended charge,"

1

curles

2d Count.

3d Count, refusing to hear witnesses produced.

curses on, &c. at and within the town and parish of S. in the said county, whereby he had forfeited the sum of ten pounds to the poor of the parish of S.; and whereas the said R. S. had refused, and did refuse to pay down the said sum of ten pounds for the use of the poor of the said parish, and also had refused and did refuse to give satisfactory security to pay the same, the said T. C. esquire, did require him the said constable to convey the said R. S. to the house of correction at S. aforesaid, and to deliver him to the keeper thereof, together with that warrant;” and the said T. C. by the said warrant did command him the said keeper to receive him the said R. S. into his custody in the said house of correction, and there to detain and keep him to hard labour for the space of ten days; by reason of which premises the said R. S. was unlawfully imprisoned, and kept and detained in prison for a long space of time, to wit, for the space of ten days, and during all that time was prevented and hindered from following and transacting his lawful affairs and business, and was obliged to undergo and suffer, and did, during all that time, undergo and suffer great pain and uneasiness both of body and mind, and was obliged to lay out and expend, and did lay out and expend a large sum of money in and about the maintaining himself during that time, to wit, the sum of twenty pounds, and in the freeing and discharging himself from the said prison, that is to say, at, &c. in, &c. : And whereas, &c. &c. [this Count same as the first, only omitting what is in Italic and inserting in lieu thereof what is in the margin] : And whereas also at the several and respective times of committing the several and respective wrongs and grievances hereinafter mentioned, was, &c. ; and whereas also the said R. S. on, &c. at, &c. did personally, &c. in order to make his defence against, &c. pretended, &c. against the said R. S. of swearing and cursing two hundred profane oaths and curses : And the said R. S. in fact further saith, that he the said R. S. was then and there, to wit, on, &c. ready to make his defence against the said last-mentioned pretended charge, before him the said T. C. being such justice of the peace as aforesaid, and certain other persons, namely, W. C. &c. &c. did then and there appear before the said T. C. then and there being such justice of the peace as last aforesaid, as witnesses for and on the behalf of him the said R. S. upon account of the said last mentioned pretended charge ; and the said T. C. was then and there requested by the said R. S. to hear the defence of him the said R. S. against the said last-mentioned pretended charge, and to hear the evidence of his the said R. S.’s said witnesses on that behalf ; yet the said T. C. not regarding the laws of, &c. nor his duty of, &c. but further wickedly, &c. the said R. S. then and there refused to hear the defence of him the said R. S. against the said last-mentioned pretended charge, and to hear the evidence of his said witnesses, on either of them, in that behalf, but on the contrary thereof, he the said T. C. being such justice of the peace as aforesaid, further wickedly, &c. the said R. S. to wit, on, &c. did unlawfully, &c. convict the said

Said R. S. of the said last-mentioned pretended charge, without having heard his defence against the same charge, or having heard the evidence of his said witnesses, or either of them in that behalf; and that the said T. C. in pursuance of the said last mentioned conviction, and further intending wickedly and maliciously to oppress and injure the said R. S. to wit, on, &c. at, &c. in, &c. made his certain other warrant in writing, sealed with his seal, and directed to, &c. by which said last-mentioned warrant reciting, "That whereas, &c." [set out the warrant as before, and finish this Count same as the last]: And whereas also the said T. C. at the several and respective times of the committing of, &c. was, &c. in and for the said county of S. that is to say, at, &c. in, &c.; and the said T. C. being such justice of the peace as last aforesaid, on, &c. at, &c. in, &c. did unlawfully, and contrary to his duty as such justice of the peace, convict the said R. S. of a certain supposed offence of swearing and cursing two hundred profane oaths and curses; and the said T. C. then and there, to wit, on, &c. at, &c. under colour of his office of justice of the peace as aforesaid, unlawfully did adjudge that the said R. S. had forfeited for the said supposed offence the sum of ten pounds to the poor of the said parish of S. without having heard any defence of him the said R. Sabatier in that behalf, although he the said R. Sabatier, before he was so convicted as aforesaid, to wit, on, &c. at, &c. was ready to make his defence therein by certain persons, namely, W. C. &c. witnesses for him the said R. S. in that behalf, and did then and there offer to the said T. C. to make his defence therein before him the said T. C. being such justice of the peace as last aforesaid, by his said witnesses, but the said T. C. then and there being such justice of the peace as last aforesaid, then and there refused to permit or suffer, and did not permit or suffer the said R. S. to make his defence therein; and the said R. S. further says, that the said T. C. being such justice of the peace as last aforesaid, on, &c. at, &c. in, &c. in consequence of the said last-mentioned conviction, did cause and procure the said R. S. to be unjustly imprisoned and detained in prison for a long space of time, to wit, for the space of other ten days, by reason whereof the said R. S. during all that time was prevented and hindered from following, &c. [finish this Count as before]: And whereas also the said T. C. at the time of, &c. was, &c. that is to say, at, &c. in, &c.; and the said T. C. being such justice of the peace as aforesaid, he the said T. C. further wickedly and maliciously intending to oppress and injure the said R. S. to wit, on, &c. at, &c. in, &c. did, contrary to the laws of this kingdom, and to his duty as such justice of the peace as last aforesaid, unlawfully, wickedly, and maliciously convict the said R. S. of a certain other supposed offence in swearing and cursing two hundred profane oaths and curses, (3) *although the said R. S. before he was so convicted as last aforesaid, to wit, on, &c. at, &c. was ready, and did then and there offer to the said T. C. being such justice of the peace as last aforesaid, to make his defence therein,*

4th Count, convicting without evidence.

5th Count.

(3) "without, hearing the said R. S. in his"

6th Count.

7th Count, con-
victing, not hav-
ing legal au-
thority.

therein, but the said T. C. then and there unlawfully, wickedly, and maliciously refused to permit or suffer, and did not permit or suffer the said R. S. to make his defence therein, that is to say, at, &c. in, &c.: And whereas, &c. [this count same as the fifth, only leaving out what is in *Italic*, and inserting in lieu thereof what is in margin]: And whereas also at the time of the committing of the wrong and injury hereinafter mentioned the said T. C. was, and for divers years last past had been and still is one of his majesty's justices of the peace in and for the said county of S. and the said T. C. being such justice as last aforesaid, further wickedly and maliciously intending to oppress and injure the said R. S. to wit, on, &c. at, &c. in, &c. did contrary to the laws of, &c. and to his duty of, &c. wickedly and maliciously convict the said R. S. of a certain other supposed offence in swearing and cursing two hundred profane oaths and curses, he the said T. C. not having as justice of the peace as last aforesaid any legal authority whatsoever so to do, that is to say, at, &c. by reason of which premises in the three last counts specified, he the said R. S. hath been greatly injured, and hath been imprisoned and kept in prison for another long space of time, to wit, for the space of other ten days and during all that time was prevented and hindered from following, &c. &c. Damage five hundred pounds.

Declaration a-
gainst the mayor
of a borough for
not returning
plaintiff when
duly elected to
serve as a mem-
ber in parliament
for the borough,
but returning
other candidates,
stating the pro-
ceedings of the
select committee
and the house of
commons in de-
claring plaintiff
duly elected,
&c. &c.

DORSETSHIRE, to wit. H. W. Mortimer complains of Charles Pinhorn, being, &c.; for that whereas on, &c. in the twentieth year of the reign of our sovereign lord the now king, a certain writ of our sovereign lord the now king, issued out of his majesty's court of chancery (the same court then being at Westminster in the county of Middlesex,) directed to the then sheriff of his majesty's county of Dorset, by which said writ, reciting, that whereas, &c. &c. [recite the writ] remitting to his said majesty one part of the aforesaid indentures annexed to the said writ with the said writ, which said writ afterwards and before the return thereof, to wit, on, &c. in the twentieth year aforesaid, at the borough of S. in the said county of D. was delivered to P. B. esquire, he the said P. B. then and continually from thenceforth, until, and after the return of the said writ, being sheriff of the said county of D. to be executed in due form of law; by virtue of which said writ, he the said P. B. sheriff as aforesaid, afterwards and before the return thereof, to wit, on, &c. in the twentieth year aforesaid, at, &c. in, &c. made his certain precept in writing, sealed with the seal of his said office of sheriff of the said county of D. and bearing date the same day and year last aforesaid, and directed to the mayor of the said borough of S. in the said county of D. of and for the election within the said borough of two burgesses of the same borough, according to the form and effect of the said writ, by which said precept the said sheriff willed and required the said mayor, that proclamation being first duly made throughout the said borough, he should cause to be elected, according to the form of the statute in that case made and provided,

provided, two burgesses of the most sufficient and discreet of the said borough, whether they should be present or absent, and the names of such two burgesses so elected he should cause to be inserted in certain indentures to be thereupon made between the said sheriff and them who should be present at such election, and the said burgesses at the day and place in the said writ named, the said mayor should cause to come in such manner that the said burgesses might have from them full and sufficient power for themselves and the commonalty of the said borough to do and consent to those things which then and there by the common council of his majesty's said kingdom by the blessing of God should happen to be ordained upon the affairs in the said writ specified, so that for want of such power or through an improvident election of the said burgesses, the aforesaid affairs might in no wise remain unfinished; and that the said mayor should certify to the said sheriff the said election so as aforesaid to be made under the seal of the said mayor and the seals of those who should be present at such election without delay, together with that precept and the indentures annexed, which said precept afterwards and before the return of the said writ, to wit, on, &c. in the twentieth year aforesaid, at, &c. in, &c. was delivered to the said defendant, he the said defendant then and continually from thenceforth, until, and at, and after the election of two burgesses to serve as burgesses for the said borough in the said parliament to be holden as aforesaid, being mayor of the said borough of S. in the county of D. aforesaid, and to whom the execution of that precept of right belonged to be executed in due form of law, to wit, at, &c. by virtue of which said precept, afterwards and before the return of the said writ, to wit, on, &c. in the twentieth year aforesaid, at, &c. the election of two burgesses of the said borough, to serve as burgesses for the said borough at the then next parliament to be holden as aforesaid, was had and made, at which said election and before and until the said election, the said H. W. M. esquire, and one sir G. L. baronet, and one sir F. S. and one sir T. B. were and stood candidates, that of them two might be elected to serve as burgesses for the said borough of S. in the said then next parliament; and thereupon the said plaintiff at the said election was duly elected to serve as one of the burgesses for the said borough in the said then next parliament to be holden as aforesaid by the persons then and there present, and having a right to make such election as aforesaid; whereof the said plaintiff, on, &c. at, &c. in, &c. had notice †; yet the said defendant so being mayor of the said borough as aforesaid, and the returning officer at the said election well knowing the premises but not regarding the duty of his office in this behalf, nor the statute in such case made and provided in any wise fearing, but wilfully, maliciously, fraudulently, and injuriously intending the said plaintiff in this behalf unjustly to hinder, vex, and oppress, and to hinder him from his said place in the said parliament of our said lord the king, and to put

* Of candidates to serve in parliament.

him

him to great expence, did not certify and return the said plaintiff to be elected to serve as a burges for the said borough of S. in the said then next parliament to be holden as aforesaid, but the said defendant voluntarily, wilfully, obstinately, and maliciously, neglected and refused so to do, to wit, at, &c. in, &c. And the said defendant so being mayor and returning officer as aforesaid, after the said election, that is to say, on, &c. in the twentieth year aforesaid, wilfully, maliciously, and injuriously, contrary to the duty of his said office, and contrary to the said statute, caused and procured a certain indenture to be made between the said P. B. esquire, high sheriff of the county D. aforesaid of the one part, and him the said defendant by the name and description of C. P. gentleman, mayor of the borough of S. in the said county of D. and other the inhabitants paying scot and lot there of the other part, and sealed and caused to be sealed one part of the said indenture with the seal of the said C. P. and with the seals of other the inhabitants of the said borough, in which said indenture it was falsely, maliciously, and injuriously contained and alledged, that the said mayor and inhabitants, according to the tenor of his said majesty's writ, and the said sheriff's precept thereon to the said mayor directed for the election of two burgeses to serve in parliament during the then next sessions of parliament for the said borough, had elected, nominated, and chosen sir T. R. baronet, and sir F. S. baronet, to be burgeses of the said borough in the said then next sessions of parliament thereby giving them full power for and in behalf of the said borough, to do, execute, and consent to all such things as should there by authority of the said parliament be ordained and enacted; and afterwards, to wit, on, &c. in the twentieth year aforesaid, at, &c. he the said defendant wilfully, falsely, maliciously, and injuriously, contrary to the duty of his said office of mayor of the said borough, and contrary to the statute in that case made and provided, did certify and return the said indenture to the said P. B. esquire, being the sheriff of the said county of D. in order that the said indenture might be returned and certified, and remitted by the said sheriff to the said lord the king in his chancery, and which said return afterwards, to wit, on, &c. in the twentieth year of the reign of the lord the now king, was accordingly certified and remitted to our said lord the king in his chancery, the said chancery then and yet being at W. in the said county of M. in contempt of our said lord the king and to the great damage of the said plaintiff, and also against the form of the statute in such case made and provided; whereas in truth and in fact the said sir T. R. was not duly elected at the said election to serve as one of the burgeses of the said borough of S. in the said parliament to be holden as aforesaid; and whereas in truth and in fact the said plaintiff was duly elected, and ought to have been returned to serve as one of the burgeses for the said borough of S. in the said parliament to be holden as aforesaid; and the said plaintiff further says, that afterwards, to wit, on, &c. in the twenty-first year of the reign of, &c.

&c. a petition of the said sir G. C. and plaintiff was presented to the commons of Great Britain in parliament assembled, complaining of the said election and return being an undue election and return of burgesses for the said borough to serve in the said parliament; and that the petition of the said sir G. C. and plaintiff was ordered and appointed by the said commons of Great Britain in parliament assembled to be taken into consideration, on, &c. and the said petition was accordingly taken into consideration at the time appointed in that behalf, and that a select committee of the said commons was then elected and nominated, according to the form of the statute in such case made and provided, to try and determine the merits of the said petition; and the said select committee determined that the said sir T. R. was not duly elected a burgess to serve in the said parliament to be holden as aforesaid for the said borough of S. and also that the said plaintiff ought to have been returned a burgess to serve in the said parliament for the said borough of S. and that the said plaintiff was duly elected a burgess to serve in the said parliament for the said borough of S. and the said plaintiff further saith, that the chairman of the said select committee afterwards, to wit, on, &c. in the twenty-first year of the reign of, &c. informed the house of the said commons of Great Britain in parliament assembled of the said determination of the said select committee, and thereupon it was then and there ordered by the commons of Great Britain that the said determination of the said select committee should be entered in the journals of the said house of commons; and it was also then and there ordered by the said commons in parliament assembled, that the deputy clerk of the crown should attend the said house of commons, on, &c. with the said return for the said borough of S. and should amend the same by razing out the name of the said sir T. R. and inserting the name of the said plaintiff instead thereof; and the deputy clerk of the crown then, to wit, on, &c. at, &c. attending according to order with the said return for the said borough of S. then and there amended the said return by razing out the name of the said sir T. R. and inserting the name of the said plaintiff thereof, that is to say, at W. aforesaid; by reason of which said premises he was hindered from taking his seat in the said parliament for a long time, to wit, for the space of five months, and was obliged to lay out and expend, and did lay out and expend a large sum of money, to wit, the sum of five thousand pounds in order to have and obtain his seat in the said parliament, to wit, at the borough of S. aforesaid in the county of D. aforesaid; and whereas, on, &c. [as in the first Count till you come to this mark †, then proceed as follows]: Yet the said defendant so being mayor of the said borough and returning officer at the said election, well knowing the premises but not regarding the duty of his office in this behalf, nor the statute in such case made and provided, and contriving and maliciously intending unjustly to injure the said plaintiff in this behalf and him the said plaintiff in this unjustly to injure and wholly to deprive him of his seat in the said then next parliament of his present majesty, and to put him to great charges and expences,

did not certify, declare, or return the said plaintiff to be elected as one of the burgesses for the said borough in the said parliament to be holden as aforesaid, but the said defendant wilfully, maliciously, and injuriously neglected and refused so to do, and then and there falsely, wrongfully, maliciously, and injuriously returned the said precept to the said P. B. esquire, then being sheriff of the said county of D. as aforesaid, that the said sir T. R. and sir F. S. had been duly elected to serve as burgesses in the present parliament for the borough aforesaid, to wit, at the borough aforesaid, in order that the same might be certified and returned by the said sheriff to our said lord the king in his chancery according to the said writ, to wit, at W. aforesaid, to wit, at the borough of S. aforesaid, in the county of D. aforesaid, to the great damage of the said plaintiff; by reason of which said last mentioned premises the said plaintiff was hindered from taking his seat in the then next parliament for a long time, to wit, for the space of five months, and until the said commons had determined that at the said election the said plaintiff had been duly elected to serve in parliament for the said borough; and the said plaintiff was obliged to expend and lay out, and did lay out and expend a large sum of money, to wit, the sum of five thousand pounds in order to have and obtain his seat in the said then next parliament, to wit, at the borough of S. aforesaid in the county of D. aforesaid; whereupon the said plaintiff saith that he is injured and hath sustained damage to the value of ten thousand pounds; and therefore he brings his suit.

W. BALDWIN.

Declaration against a marshal-sea court officer for an escape and false return of his writ of *capias*.

MIDDLESEX, to wit. Griffith Evans complains of Simon Place, being, &c. of a plea of trespass on the case; for that whereas he the said plaintiff heretofore, to wit, on the day of in the year of the reign of our sovereign lord George the Third, now king of Great Britain, &c. came into the court of our said lord the king of his said majesty's palace of Westminster then held at Southwark, in the county of Surry, within the jurisdiction of said court before *William, earl Talbot*, then steward of the king's household, *sir Philip Meadows, knight*, then marshal of said household, and *Danby Pickering, esquire*, then steward of said court, judges of the court aforesaid, by virtue of the letters patent of Charles the Second, late king of England, &c. bearing date at Westminster the fourteenth day of October, in the sixteenth year of his reign, according to the custom of said court from time immemorial used and approved of in the said court, and levied his certain plaint against one John Piner at the suit of him the said plaintiff in a certain plea of trespass on the case, to the damage of said plaintiff of ninety-nine shillings for a cause of action arising to said plaintiff against said defendant within the jurisdiction of that court, and then and there found pledges to prosecute his said plaint, to wit, John Doe and Richard Roe, and such proceedings were thereupon had in the same court of the king's palace aforesaid, in the said plea of the said plaint, that afterwards, to

Wit,

wit, at the court of the king's palace aforesaid, held at Southwark aforesaid, in the county of Surry, within the jurisdiction of said court on Friday the day of, &c. in year of our lord the now king, before the aforesaid judges of the said court, there issued out of the said court at the prayer of said plaintiff, a certain writ of our said lord the now king called a *capias* at the suit of said plaintiff against said John Piner directed to the bearers of the virges of his said majesty's household, the officers and ministers of the said court of the king's palace of Westminster, and every of them, by which said writ our said lord the now king commanded them and every of them that they or one of them should take said I. P. if he should be found within the jurisdiction of the said court and him safely keep, so that they or one of them might have his body before the judges of the said court at the then next court of the king's palace of Westminster aforesaid, on Friday the day of, &c. then next following, to be holden at Southwark aforesaid, in the county of Surry, to answer to said plaintiff of said plea of trespass on the case of said plaintiff his damage of ninety-nine shillings, and that they or one of them should have there then that writ, which said writ aforesaid and before the delivery thereof to be executed as is herein after mentioned was duly marked for bail for pounds, according to the form of the statute in such case made and provided, which said writ, afterwards and before the return thereof, to wit, on, &c. in the year aforesaid, to wit, at W. aforesaid in said county of Middlesex, was delivered to said defendant (he the said defendant then and until and after the return of the said writ being one of the bearers of the virges of his said majesty's household and an officer and minister of said court of his said majesty's palace,) to be executed in due form of law; and said plaintiff further saith that afterwards and before the return of said writ, to wit, on said day of in the year aforesaid, within the jurisdiction of that court, that is to say, at Westminster aforesaid, said I. P. was in the presence of said defendant, he the said defendant so being one of the bearers of the virges of his said majesty's household and an officer and minister of said court of his said majesty's palace; and the said plaintiff then and there shewed and caused to be shewn to said defendant said I. P. and the said defendant was then and there requested to take and arrest the said I. P. by his body according to the tenor of the said writ; yet said defendant so being one of the bearers of the virges of his said majesty's household, and an officer and minister of the said court of his majesty's palace, not regarding the duty of his said office, but contriving and maliciously intending, wrongfully and unjustly to injure and prejudice said plaintiff, and to deprive him of the means of the recovery of his aforesaid damage afterwards, to wit, on the same day and year last aforesaid, to wit, at W. aforesaid, voluntarily suffered and permitted said I. P. to escape and go at large without arresting or taking of him by his body by virtue of his said writ, although he said defendant might easily have taken and arrested said I. P. by his body by virtue of said writ, he the

said plaintiff being then and still wholly unsatisfied his said damages, and at the return of said writ neglected to have, nor had he the body of the said I. P. before the judges of said court at the return of said writ as he the said defendant was by the said writ commanded; but on the contrary thereof he the said defendant, so being one of the bearers of the virges of his said majesty's household, and an officer and minister of said court of his said majesty's palace, falsely and deceitfully returned upon the said writ to said court of his said majesty's said palace of Westminster, held at Southwark in the county of Surry, that the said I. P. was not found within the jurisdiction of said court, by means of which said premises, said plaintiff is greatly hurt, prejudiced, and damaged, and greatly retarded from the recovery of his aforesaid damages, and very likely wholly to lose the same, to the damage of said plaintiff of twenty pounds, for which he brings his suit, &c. Pledges, &c. I. MORGAN.

Declaration against the marshal of the marshalsea for suffering a prisoner to escape, who was originally in prison at suit of another, but detained at plaintiff's suit.

MIDDLESEX, to wit. Jonathan Widmer complains of Richard Mullins, esquire, marshal of the Marshalsea of our lord the now king, before the king himself, present here in court the same day in a plea of trespass on the case; for that whereas, &c. &c. [set forth the original cause of action,] the said several sums of money being wholly unpaid to said plaintiff, and said promise and undertaking of said S. being wholly unperformed to said plaintiff for the recovery of his damages by him sustained on occasion of the non payment of said several sums of money so due and owing to him as aforesaid, and of the not performing of said promise and undertaking, afterwards, to wit, in term in the year of the reign of our lord the now king, (he the said I. S. then being a prisoner for debt in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, being thereunto before then duly committed by virtue of process, issuing out of this court here,) came before our lord the king at Westminster by T. S. his then attorney, and then and there according to the custom of said court of our said lord the king, before the king himself, here exhibited his bill against said S. so then being in the custody of the said then marshal of the marshalsea of our said lord the king, before the king himself, in a plea of trespass on the case, &c. and then and there found pledges to prosecute his said writ, to wit, John Doe and Richard Roe, and by said bill he the said plaintiff then and there complained against the said S. so being in the custody of the said then marshal of the marshalsea of our lord the king, before the king himself; for that whereas, &c. &c. [set forth the original declaration, verbatim, omitting the pledges], and afterwards, to wit, on the day of A. D. at Westminster aforesaid, personally served said S. so then being a prisoner for debt in the actual custody of said defendant then and still being marshal of &c. aforesaid, and was duly charged in custody as aforesaid with a declaration at suit of the said plaintiff in said bill in the plea aforesaid, according

according to the usual course and practice of said court of our said lord the king here, to wit, at Westminster aforesaid, whereby and by means whereof, said defendant then and still being marshal, &c. then and there had and detained said S. in his custody at suit of the said plaintiff in the plea aforesaid for want of bail to said bill, and such proceedings were thereon had in said plea against said S. at suit of said plaintiff, that afterwards, to wit, in term in the year of the reign of our lord the now king, said plaintiff by the consideration of the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, recovered in said plea against said S. pounds which were then and there in and by said court awarded against said S. to said plaintiff for his damages which he had sustained as well on occasion of the not performing of the several promises and undertakings aforesaid, as for his costs and charges by him laid out about his suit in that behalf, whereof said S. was duly convicted, as by the record and proceedings thereof remaining in said court of our said lord the king, before the king himself at Westminster aforesaid, in full force and wholly unsatisfied, more fully appears; and said plaintiff further saith, that said S. so being in the custody of said defendant, marshal of, &c. as aforesaid, charged as aforesaid at suit of said plaintiff, until he said defendant so being marshal of, &c. as aforesaid, not regarding the duty of his said office of marshal of the marshalsea, but contriving, and maliciously and fraudulently intending craftily and subtilly to deceive and defraud said plaintiff and to hinder and to deprive him of the means of recovering his damages on occasion of the not performing of, &c. between said times of exhibiting said bill and said charging said S. in his custody with said declaration at suit of said plaintiff in the said plea as aforesaid, and the said time of the recovery of the aforesaid judgment, and while said plea was depending in said court, and whilst said S. was in the custody of said defendant, marshal of the marshalsea charged as aforesaid at suit in the said plea, to wit, on the day of in said year of the reign of our said lord the now king, at W. aforesaid, freely, wilfully, and voluntarily, and without any power or authority whatsoever permitted and suffered said S. to go at large out of the custody of him said defendant, without the leave or licence and against the will of said plaintiff, he said defendant then and still being marshal of, &c. and said plaintiff being then and yet wholly unsatisfied the money so then due and owing to him from said S. as aforesaid, or any part thereof, or the damages by him the said plaintiff sustained, on occasion of the not performing of &c. by means of which said premises, said plaintiff is unjustly injured and damnified, and is greatly retarded and hindered in and from the recovering of his aforesaid damages, and is very likely to lose the same. Damages, &c. suit, &c. pledges, &c.

Drawn by Mr. WARREN.

Declaration for
escape and false
return of a *lati-
tat*.

1st Count, for
suffering pris-
oner to escape
after arrest.

2d Count, for
neglecting to ar-
rest

SUSSEX, to wit. J. S. complains of T. F. esquire, late she-
riff of the county of S. being, &c. of a plea of trespass on the
case; for that whereas, &c. [Set forth the original cause of ac-
tion]; (*a*) but said several sums of money being wholly unpaid to said
plaintiff, and said promises and undertakings of said T. W. being
wholly unperformed, he the said plaintiff, for the recovery of his
damages by him sustained on occasion of the not performing of said
several promises and undertakings afterwards, to wit, on the (*b*)
day of , in the year of the reign of our fove-
reign lord George the Third, king of Great Britain, &c. sued
and prosecuted out of the court of our lord the now king, before
the king himself (the said court then and still being held at West-
minster, in the said county of Middlesex), a certain writ of our said
lord the king called a *latitat*, against said T. W. directed to the
then sheriff of S.; by which said writ our said lord the king com-
manded the said then sheriff of the county of S. &c. &c. [Set forth
the *latitat*]; which said writ afterwards, and before the delivery
thereof to the then sheriff of the county of S. aforesaid, to be
executed as is hereinafter mentioned, was duly indorsed for bail,
by virtue of an affidavit of the cause of action before then duly
made and affiled of record in the said court of our said lord the
king, before the king himself here, according to the form of the
statute in such case made and provided; which said writ so in-
dorsed, afterwards and before the return thereof, to wit, on, &c.
in the year aforesaid, at, &c. aforesaid, in said county of Sussex,
was delivered to said defendant, who then, and from thenceforth
until, and at and after the return of said writ, was sheriff of the
said county of Sussex, to be executed in due form of law; by vir-
tue of which said writ he the defendant, so then being sheriff of
said county of Sussex as aforesaid, afterwards and before the return
of the said writ, to wit, on the day and year last aforesaid, at, &c.
aforesaid, and within his bailiwick, did take and arrest said T. W.
by his body, and then and there had and detained him in custody at
the suit of the said plaintiff for the cause aforesaid, by virtue of
said writ, and for want of bail thereto, to wit, at, &c. aforesaid;
yet the said defendant, so being sheriff of the said county of S.
not regarding the duty of his office as such sheriff as aforesaid, but
contriving and maliciously intending wrongfully and unjustly to
hurt, injure, and prejudice said plaintiff, and to deprive him of the
means of the recovery of his damages aforesaid, did afterwards, to
wit, on the day and year last aforesaid, at, &c. aforesaid, without
the leave, &c. of said plaintiff, voluntarily suffer and permit the
said T. W. to escape and go at large wheresoever he

(a) If the original cause of action is
in debt instead of the words in *Italic*,
say, and said pound, being wholly un-
paid to said plaintiff, and said writing-ob-

ligatory being in full force, be the said plain-
tiff, for the recovery of his said debt.

(b) The day on which the writ was
tested.

would

would (a), out of the custody of him said defendant, (he the said defendant then being sheriff of said county of S. and the said plaintiff then and there being wholly unsatisfied for his said damages, to wit, at, &c. aforesaid) ; and said defendant, so being sheriff of the said county of S. did afterwards, to wit, on the day of , in the year of Our Lord , being the day of the return of said writ, falsely and deceitfully return upon the said writ to said court of our said lord the king, before the king himself at Westminster aforesaid, that the said T. W. was not found in his bailiwick, by means of which said premises he the said plaintiff is greatly hurt, prejudiced, and damnified, and greatly hindered, prevented, and retarded from the recovery of his damages aforesaid, and is very likely wholly to lose the same, to wit, at, &c. aforesaid : And whereas the said T. W. &c. &c. [Set forth the original 2d Count to the cause of action as before, and then proceed to this mark in the last declaration first Count †, and then go on as follows] : And said plaintiff further saith, that said T. W. after the delivery of the said last-mentioned writ to said defendant (so being sheriff of said county of S. as aforesaid), and before the return thereof, to wit, on the day and year last aforesaid, and on divers other days and times between that day and the return of the said last-mentioned writ, and within the bailiwick of said defendant (so being such sheriff as aforesaid), to wit, at, &c. aforesaid, was in the sight and in the company and presence of said defendant, so that said defendant being sheriff of said county of, &c. as aforesaid, could and might at all or any, or either of those days and times, have taken and arrested said T. W. by his body, by virtue of said last-mentioned writ, at the suit of said plaintiff, if he would or had a mind so to have done ; yet he said defendant, so being sheriff of said county of, &c. as aforesaid, did not, nor would at any or either of those days and

(a) Qu. It this is sufficient without saying *non compervit ad diem*, 4. Bac. Abr. 19 cites Noy 72. the sheriff of Nottingham's case, where it was held not to be sufficient, because the sheriff might let defendant go at large upon bail.

(b) This Count may at first seem repugnant to the former, but such Count is to be considered as a distinct declaration adjudged on error from C. B. into K. B. Loft's Rep. 63.

N. B. As an absolute caption in an action for a false return of a *latitat* is very hard to be proved, it is necessary to add a second Count (d) to the declaration, omitting the caption, and instead thereof to shew that the sheriff could and might,

but did not nor would arrest. I remember a case of *Hall against Sheriff of Middlesex*, Michaelmas, 11. Geo. 3. where it was proved that the officer was several times in company with the man against whom the writ issued, and that he told the attorney for the plaintiff that he should have a bail bond, &c. ; yet, as they could not prove an absolute caption (which was alledged in the declaration as only having one Count), the plaintiff was nonsuited before Mr. Justice Ashurst in London, and on argument before the court, Mr. Wallace for defendant, and Mr. Dunning for plaintiff, H. 11. G. 3. it was held it did not amount to a caption. Plaintiff nonsuited.

times, or at any other time before the return of said last-mentioned writ, take or arrest said T. W. by his body at the suit of said plaintiff, by virtue of said last-mentioned writ, but wholly refused and neglected so to do; and afterwards, to wit, on, &c. being the day of the return of said last-mentioned writ, he the said defendant, so then being sheriff of said county of S. as aforesaid, falsely and deceitfully returned, &c. &c. [as before.] Damages, &c. Suit, &c. Pledges, &c.

C. RUNNINGTON.

Declaration for a false return of a fieri facias, where original action was in debt.

1st Count states seizure of goods sufficient to discharge, &c. but had not the money at the return, &c. and false return.

MIDDLESEX, to wit. Thomas Brooke, gentleman, against Stephen Sayre, and William Lee, esquires, late sheriff of Middlesex, &c.; for that whereas plaintiff, in *Easter term*, in the fourteenth year of, &c. in his court of the bench at Westminster, in the county of Middlesex, before sir William de Grey, knight, and his companions, then his majesty's justices of the bench there, by the consideration and judgment of said court recovered (a) against one Ann Popple as well a certain debt of two hundred and fifty pounds as also sixty-three shillings which in and by said court were awarded to said plaintiff for his damages which he has sustained by occasion of the detaining that debt, whereof the said Ann was convicted, as by the record (b) and proceedings thereof remaining in said court, which said judgment remains in its full force, not reversed, annulled, set aside, paid off, or satisfied to said plaintiff; and said judgment being in full force, plaintiff, on the twentieth day of April, in the fourteenth year aforesaid, for obtaining said debt and damages sued out of said court a certain writ of our said lord the king called a *fieri facias*, directed to the then sheriff of Middlesex; by which said writ our said lord the king commanded, &c. [recite the writ]; which said writ afterwards, and before the return thereof, to wit, on, &c. in the fourteenth year aforesaid, at Westminster aforesaid, was delivered to said defendants, who then and from thence for a long time, to wit, until and at and after the return thereof, were sheriff of the said county of M. to be executed in due form of law; by virtue of which said writ, said defendant, so being sheriff of said county, afterwards and before the return of said writ, to wit, on, &c. in the fourteenth year aforesaid, at Westminster aforesaid, and within said then sheriff's bailiwick, took into his hands and possession divers goods and chattles of said A. P. (1) to the value of the whole debt and damages aforesaid; yet defendants, so being sheriff of said county of M. not regarding the duty of their office as such sheriff as aforesaid, but contriving and fraudulently intending to hurt, &c. said plaintiff in this behalf, and part and parcel of the said debt and damages aforesaid, in form aforesaid recovered, and the money so directed to be levied by the indorsement"

(1) "to a large value, to wit, to the value of the money directed by the indorsement on the said writ to be levied, being thereof levied

(a) Necessary to be alledged, 4. Bac. Abr. 19.

(b) Not absolutely necessary; the judgment being only a conveyance to the action, 4. Bac. Abr. 19.

to deprive him of great part of his debt and damages aforesaid, and of the means of recovering same, said defendants, so being such sheriff as aforesaid, had, nor had either of them said money before his majesty's justices of the bench at Westminster, at the return of said writ, to render to plaintiff for his debt and damages aforesaid, according to the exigency of said writ; nor have said defendants, so being such sheriff as aforesaid, paid said debt and damages aforesaid to said plaintiff, but therein wholly failed and made default; and at the return of said writ, falsely, maliciously, and deceitfully returned to the justices of our said lord the king of the bench at Westminster aforesaid in said writ, that by virtue of that writ to said sheriff directed, he had caused to be levied of the goods and chattels of the said A. B. in his bailiwick fifty-six pounds seven shillings, which money he had paid to plaintiff in satisfaction of so much of debt and damages in said writ mentioned, and that said A. P. had no other or more goods or chattels in his bailiwick, whereof he could cause to be made the residue of said debt and damages, or any part thereof, as by said writ and return thereof remaining of record in said court appears; by means of which said premises said plaintiff is greatly injured and deprived of the means of obtaining the residue of his said debt and damages, and is likely wholly to lose the same: And whereas, &c. [as in first Count, till you have recited the writ]: And the said plaintiff avers, that said defendants, so being sheriff as aforesaid, afterwards and before the return of said writ, to wit, on the twenty-seventh day of April, in the year aforesaid, within his bailiwick, to wit, at, &c. aforesaid, seized and took divers other goods and chattels of said A. P. *to value of full debt and damages aforesaid (a)*, under colour and pretence of levying of said debt and damages thereof, and might thereof have levied said full debt and damages as he ought to have done; yet, &c. [as before] whilst said goods and chattels so remained in his custody under said seizure, and before the return of said writ, to wit, on the day and year last aforesaid, and on divers other days and times between that day and the return of said writ, so negligently, carelessly, and incautiously behaved, conducted, and demeaned himself in execution of his said office of sheriff as aforesaid, that he then and there suffered and permitted great part of the goods and chattels to be purloined, rescued, and taken away out of his custody and possession by some person or persons to said plaintiff unknown, and the same were thereby wholly lost; and at the return of said writ, said defendants, late sheriff of Middlesex as aforesaid, returned, &c. [as before]: And whereas, &c. [as in first Count, till you come to the end of recital of writ and delivery thereof, then go on as follows]: And plaintiff avers, that the said A. P. at the time of the delivery of said last-mentioned writ to said defendants, so then being sheriff of Middlesex, to be executed in due form of law as aforesaid, and from thence for a long time, to wit, until the return of said last-mentioned writ, had di-

2d Count, a like seizure, but by negligence some were stolen.

3d Count, defendant had goods, but sheriffs neglected to levy.

(a) See alteration in first Count, if necessary.

vers goods and chattels in the bailiwick of said then sheriff to the value of the whole debt and damages aforesaid; and that defendants, so being sheriff of Middlesex, might and ought to have caused the debt and damages last aforesaid to have been fully levied, whereof said late sheriff then and there had due notice; yet, &c. did not levy, or cause to be levied of those goods, &c. or of any other goods, &c. in his bailiwick, the whole of said last-mentioned debt and damages but one fifty-six pounds seven shillings, part thereof, and no more; and at the return, &c. [as in first Count]. Damages one hundred pounds. Suit, &c.

This should be conformable to the judgment if entered up; if not entered up, make the judgment conformable to the declaration in debt.

Drawn by Mr. WARREN.

Pleas before our lord the king at Westminster, of the term of St. Hilary, in the twentieth year of the reign of our sovereign lord George the Second, by the grace of God, &c. and in A. D. 1746. (Roll. 1013.)

Record in an action against a surviving sheriff, for the escape of a person who was in custody under an alias *capias ad respondendum*, and who, after his escape, died in-

LONDON, to wit. Thomas Wright puts in his stead William Treherne, his attorney, against sir Samuel Pennant, knight, in a plea of trespass on the case: London, to wit. The said sir Samuel Pennant, knight, puts, &c. London, to wit. It is to be remembered, that on Thursday next, after eight days of St. Hilary in this same term, before our lord the king at Westminster, came Thomas Wright, by William Treherne his attorney, and brought here into the court of our said lord the king then there his certain bill against sir Samuel Pennant, knight, in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, who, together with Walker Barnard, esquire, now deceased, were late sheriffs of the city of London, for this, to wit, that whereas one Nicholas Cary, after the first day of May 1705, that is to say, on the thirteenth day of April 1743, at London aforesaid, to wit, in the parish of St. Mary-le-bow, in the said ward of Cheap, made his certain note in writing, commonly called a promissory note [here the original cause of action was set forth, which was assumptit upon two promissory notes]; which said several sums of money being due and unpaid, and the said promises and undertakings of the said Nicholas wholly unperformed, he the said plaintiff, for the obtaining and recovery of his damages by him sustained, by reason of the non-performance of said promises and undertakings made by said Nicholas as aforesaid, afterwards and after the expiration of said seven months in said first Count contained, and also after the expiration of said twelve months, in said second note contained, that is to say, in the term of the Holy Trinity, in the eighteenth and nineteenth years in the reign of our lord the present king, prosecuted out of the court of our said lord

lord the king, before the king himself (the said court then and there being held at Westminster, in the county of Middlesex), a certain writ of our said lord the king called an *alias capias*, directed to the then sheriff of London; by which said writ the said lord the king commanded them, as formerly he had commanded them, that they should take the said Nicholas, &c. [recite the writ]; on which said writ, according to the form of the statute in such case made and provided, was indorsed, that the said sheriffs should take bail for thirty pounds by affidavit affiled; which said writ afterwards, and before the return thereof, that is to say, upon the second day of July, in the twentieth year of the reign, &c. at London, &c. aforesaid, was delivered to Walter Barnard, esquire, and said defendants then being sheriffs of said city of London, to be executed in due form of law: And said plaintiff further saith, that said W. Barnard, esquire, the said defendant, so being sheriffs of said city of L. as aforesaid, they the said W. B. and said defendant afterwards, and in the lifetime of said W. B. and before the return of said writ, to wit, on the day and year last aforesaid, within the bailiwick of said sheriffs, to wit, at L. aforesaid, took and arrested said Nicholas by his body, and had and detained him there in their custody for the cause aforesaid; nevertheless said W. B. and said defendant, in his lifetime, not regarding the duty of their office of sheriffs of said city of London, but contriving and intending to hinder the proceeding of said plaintiff in this suit against the said Nicholas, and to deprive him of his remedy for the recovery of his damages by him sustained by reason of the non-performance of said promises and undertakings of said Nicholas afterwards, and before the return of said writ, to wit, on the day and year last-mentioned (the said W. B. and said defendant so then being the sheriffs of London aforesaid), at L. &c. aforesaid, without the licence and agreement, and against the will of said plaintiff, and without any legal warrant and authority whatsoever, voluntarily permitted and suffered said Nicholas to escape out of their custody, and freely to go at large whither he would, that is to say, at L. &c. aforesaid, the said plaintiff not being satisfied his damages by him sustained by reason of the non-performance of said promises and undertakings, and said Nicholas did not appear before our lord the king at Westminster to answer said plaintiff in his said plea and bill aforesaid, and said Nicholas, since the permission of said W. B. and said defendant to escape as aforesaid, died insolvent; by reason of which said premises said plaintiff is deprived of his remedy for the recovering of his damages, and is in manifest danger of losing the same; whereupon said plaintiff saith he is injured, and hath damage of sixty pounds, and therefore he brings his suit, &c.

And the aforesaid sir Samuel, by A. B. his attorney, comes and defends the force and injury when and where, &c. and said plaintiff prays that said defendant may answer to his declaration aforesaid; and said defendant, although he was solemnly called, Judgment by default.

Award of inquisition.

Return thereof.

Final judgment.

Mercy, &c.

did not appear, nor hath said any thing in bar or preclusion of the aforesaid action of said plaintiff, whereby said plaintiff remains thereof against him undefended, for which said plaintiff ought to recover against said defendant his damages which he has sustained by reason of the premises; *but because* it is unknown to the said court of said lord the king now here what damages said plaintiff hath sustained in this particular by occasion of the premises aforesaid, *therefore it is commanded* to the sheriffs, that they do diligently enquire by the oaths of twelve good and lawful men of L. aforesaid what damages the said plaintiff hath sustained by occasion of the premises aforesaid, as for his costs and charges by him about his suit in that behalf expended, and that they should return to our said lord the king the inquisition which they should take thereon, on Wednesday next after fifteen days from the day of Easter, under their seals and the seals of those by whose oath they shall take the same, together with the writ of said lord the king to them directed: *At which day* come the aforesaid plaintiff by his attorney aforesaid, and the said sheriffs of L. aforesaid, to wit, Christopher Gascoyne, esquire, and Edward Davies, esquire, did return a certain inquisition indented and taken before them at Guildhall, in the city of London, in the parish of St. Michael Bassishaw in the same city, on the fourth day of March, in the twenty-first year of the reign of our sovereign lord George the Second, by the Grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. by the oath of twelve honest and lawful men of this bailiwick, by which it is found that the said plaintiff hath sustained damage to the sum of thirty pounds, by reason of the premises aforesaid, besides his costs and charges by him about his suit in this behalf laid out, and for those costs and charges to the sum of twenty-seven pounds four shillings; *therefore it is considered* that the said plaintiff do recover against said defendant his damages aforesaid found by the said inquisition in manner aforesaid, and also eighteen pounds twelve shillings and eightpence to the said plaintiff for his costs and charges aforesaid by the said court of our said lord the king now here, by his own assent adjudged for increase, which said damages amount in the whole to fifty pounds; and the said defendant, in mercy, &c.

Drawn by MR. WARREN.

I have looked over this transcript, and cannot find any fault sufficient to reverse the judgment therein. T. W.

Declaration against the bailiff of the liberty of the Tower, for issue of a prisoner under a *causam ad respondendum* issuing out of the court

MIDDLESEX, to wit. Francis Buttan complains of Richard Northcote being, &c. in a plea of trespass on the case; for that whereas the liberty of the Tower of London is an ancient liberty, and whereas within the liberty of the Tower aforesaid there is, and from time whereof the memory of man is not to the contrary, there hath been an ancient court of record of our lord of the Tower and liberty thereof.

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the king of the Tower and liberty of the Tower aforesaid, held within the liberty of the Tower aforesaid, in a certain house situate in a certain place called Neptune-street, in Wellcote-square, in the parish of St. John, Wapping, aforesaid, in the county of Middlesex, before the chief steward of the same court or his deputy for the time being on Wednesday in every week: And whereas the bailiff, or master, or gaoler, or keeper of the prison of said court situate in the aforesaid place called Neptune-street, in the parish of St. John, Wapping, aforesaid, in said county of Middlesex, to wit, within the liberty of the Tower of L. aforesaid, from time whereof the memory of man is not to the contrary hath had and hath used and been accustomed to have the custody of the said prison of the said court of the Tower and liberty of the Tower of L. and of all prisoners taken and arrested by virtue of any writ of the lord the king issued out of the court, and for want of bail committed to the said prison: And whereas the said defendant, on the fifth day of February A. D. 1766, and long before, was, and from thence hitherto hath been, and still is bailiff or master gaoler, or keeper of said prison: And whereas heretofore, to wit, on the tenth day of August A. D. 1765, at the parish aforesaid, in the county aforesaid, and within the liberty aforesaid, and also within the jurisdiction of said court, one John Masters made his note in writing, commonly called a promissory note, &c. [A Count on a promissory note, with assumpsit to pay, &c. according to the tenor and effect of said note]: And whereas said sum of eight pounds thirteen shillings in said note mentioned being wholly unpaid to said plaintiff, and the promise and undertaking of said John Masters to said plaintiff wholly unperformed, he the said plaintiff, for the recovery of his damages by him sustained on occasion of the non-performance of said promise and undertaking, afterwards, to wit, at the court of the said lord the king of the Tower and liberty of the Tower aforesaid, held within the liberty at the place aforesaid in that behalf above-mentioned, and within the jurisdiction of said court, on Wednesday, the fifth day of February, in the year of the reign of our lord the now king, before Paul Field, esquire, then chief steward of said court, according to the custom of the said Tower and liberty thereof, from time whereof the memory of man is not to the contrary, used and approved of in the said liberty, and in the Tower and liberty of the Tower aforesaid, the said plaintiff came in his proper person according to the custom aforesaid, and levied his certain plaint against said John Masters in a plea of trespass on the case to his damages of twelve pounds; and afterwards, to wit, at the court of our sovereign lord the king of the Tower and liberty of the Tower of L. held in the place aforesaid, and within the jurisdiction of said court, on Wednesday, the fifth day of February, in the sixth year aforesaid, the said Paul Field, then steward of said court, issued out of said court a certain precept of our said lord the king called a *capias ad respondendum*, directed to the chief bailiff of the Tower and liberty aforesaid; and also to all and singular the bailiffs and officers

officers of the court aforesaid, especially to George Ballentine, by which said precept said Paul Field, so being such chief steward, did, on behalf of our said lord the king, command them and every of them that they, some or one of them, should take said J. Masters if he should be found in their bailiwick, and him safely keep, so that they might have his body before him the said chief steward of said court, or his deputy, at the then next court here to be held on Wednesday, the twelfth day of February then next following, to answer to said plaintiff in a plea of trespass on the case to his damages of twelve pounds, and that they should then have there that precept, which said precept was duly indorsed for bail for eight pounds and upwards; and the same precept afterwards, and before the return thereof, to wit, on the tenth day of February, A. D. 1766, at the parish, and within the liberty aforesaid, and the jurisdiction of the said court, was delivered unto one George Ballentine (he the said George Ballentine then being one of the bailiffs and officers of said court of the Tower aforesaid and the liberty thereof, to be by him executed in due form of law; by virtue of which said precept, the said G. B. then being one of the bailiffs and officers of the court aforesaid of the Tower and liberty of the Tower aforesaid, afterwards and before the return of the said precept, to wit, on said tenth day of February, A. D. 1766 aforesaid, and within the jurisdiction of said court, took and arrested said J. Masters, and for want of bail thereto afterwards, to wit, on the twelfth day of February aforesaid, in the year 1766 aforesaid, at the parish of St. John, Wapping, in the said county of Middlesex, committed him the said John Masters to the prison before-mentioned belonging to said court; by virtue of which said arrest and commitment, said defendant, so being bailiff, or master, or goaler, or keeper of the prison aforesaid of the Tower aforesaid, and the liberty of the Tower, on said twelfth day of February 1766 aforesaid, at the parish aforesaid, of, &c. aforesaid, in the county of M. aforesaid, and within the jurisdiction of said court, had and detained said John Masters in the prison aforesaid, by virtue of the precept for want of bail thereto, and kept and detained him said John Masters under the custody of him said defendant, so being such bailiff, or master goaler, or keeper of the prison aforesaid from thence until the thirteenth day of March then next following in said year 1766; yet said defendant, not regarding his duty of bailiff, or master goaler, or keeper of the prison of the Tower aforesaid and liberty of said Tower, but contriving and fraudulently intending to hinder and deprive said plaintiff of his remedy in this behalf, afterwards, to wit, on the thirteenth day of March, A. D. 1766, at the parish of, &c. in said county of M. permitted and suffered said J. M. to escape out of said prison, and out of the custody of him said defendant, so then and now being bailiff, or master goaler, or keeper of the prison aforesaid of the Tower and liberty aforesaid, and to go at large wheresoever said J. M. would, without the licence or consent of said plaintiff, and against the will of said plaintiff, he said plaintiff not being satisfied

fixed his said damages, or any part thereof, and said John M. from thence continually hitherto hath absconded in places unknown to said plaintiff, so that said plaintiff is altogether deprived of any remedy for the recovery of his said damages. Damages twenty pounds. Suit, &c. Pledges, &c.

Hilary Term, 22. Geo. III.

HEREFORDSHIRE, to wit. John Jones complains of Edmund Peterhall, esquire, being in the custody of the, &c. in a plea of trespass on the case; for that whereas the said John heretofore, to wit, in Michaelmas term, in the twenty-first year of the reign of our lord the now king, before the king himself, in the court of our lord the now king himself here, to wit, at Westminster, in the county of Middlesex, by the consideration of the said court recovered against one William Carpenter twenty-five pounds, which in the same court were adjudged to the said John for his damages which he had sustained as well by reason of a certain trespass and assault before then made and committed by the said William Carpenter upon the said John, and whereof the said William Carpenter was convicted, as for his costs and charges by him laid out about his suit in that behalf, as by the record and proceedings thereof still remaining in the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, more fully appears, which said judgment still remains in its full force, strength, and effect, in no wise reversed, annulled, set aside, paid off, or satisfied: And the said John in fact further saith, that the said judgment so by him recovered as aforesaid being in full force as aforesaid, and the said damages therein mentioned unpaid and unsatisfied, he the said John, on the twelfth day of February, in the twenty-first year aforesaid, for the obtaining the said damages sued and prosecuted out of the said court of our said lord the king himself, a certain writ of our said lord the king, to wit, a writ of our said lord the king called a *fieri facias*, directed to the then sheriff of Herefordshire; by which said writ our said lord the king commanded the said sheriff, that of the goods and chattels of the said William Carpenter in his bailiwick he should cause to be levied twenty-five pounds, which the said John Jones in the said court of our said lord the king, before the king himself at Westminster, had lately recovered against him, as well for his damages which he had sustained by occasion of a certain trespass and assault then lately made by the said William Carpenter upon him the said John, as for his costs and charges which he had been put to about his suit in that behalf, being the damages so recovered by the said John as aforesaid, whereof the said William was convicted, as appeared to our said lord the king of record; and that the said sheriff should have that money before our said lord the king at Westminster on Monday next after the morrow of the ascension of Our Lord, to render to the said John for his damages and costs aforesaid; and that the said sheriff should have there then that writ, which said writ afterwards, and before the return thereof,

Declaration against a sheriff, for a false return of a *fieri facias*.
1st Count. States seizure and levy of goods sufficient, but had not money before, &c. at return. &c. and false return.

of, to wit, on the seventeenth day of March, A. D. 1781, at Hereford, in the said county of Hereford, was delivered to the said Edmund, who then, and from thence until, and at and after the return of the said writ, was sheriff of the said county of Hereford, to be executed in due form of law; by virtue of which said writ the said Edmund, so being sheriff as aforesaid, afterwards and before the return of said writ, to wit, on the day and year last aforesaid, at Hereford aforesaid, in the said county of Hereford, and within his bailiwick, as such sheriff, seized and took into his hands and possession, as such sheriff as aforesaid, divers goods and chattels of the said William Carpenter to the value of the whole of the damages so recovered by the said John as aforesaid, and in the said writ mentioned, and thereof levied the said money so directed to be levied by the said writ; yet the said Edmund, so being such sheriff as aforesaid, not regarding the duty of his said office of sheriff as aforesaid, but contriving and fraudulently intending wrongfully and unjustly to hurt, injure, and damnify the said John in this behalf, and to deprive him of his said damages so by him recovered as aforesaid, he the said Edmund had not the said sum of twenty-five pounds so by him levied as aforesaid, under and by virtue of the aforesaid writ, or any part thereof, before our said lord the king at Westminster at the return of the said writ, to render to the said John according to the exigency and command of the said writ, nor has he the said Edmund, so being such sheriff as aforesaid, at any time whatsoever paid the said money so by him levied as aforesaid, or any part thereof, to the said John, but hath therein wholly failed and made default, to wit, at Hereford aforesaid, in the said county of Hereford: And the said John in fact further saith, that at the return of the said writ, the said Edmund so being such sheriff as aforesaid, falsely, deceitfully, and maliciously returned to our said lord the king at Westminster aforesaid on the said writ, that by virtue of the said writ to him the said Edmund directed as aforesaid, he had levied of the goods and chattels of the said William Carpenter, in the said writ named, the sum of five pounds five shillings and sixpence, which may be had ready before our lord the king at the day and place in the said writ mentioned, to render to the said John Jones, in the said writ mentioned, in part of the damages and costs in the said writ specified: And he also further certified to our said lord the king on the said writ, that the aforesaid William Carpenter had no other or more goods or chattels in his bailiwick whereof he could cause to be made the residue of the damages and costs aforesaid, according to the exigency of that writ, as by the said writ and return thereof now remaining of record in the said court of our lord the king, before the king himself here, to wit, at Westminster aforesaid, fully appears; by means of which said premises the said John hath been hindered and prevented from obtaining the damages so by him recovered as aforesaid, and is like wholly to lose the same, to wit, at H. aforesaid, in the said county of Hereford aforesaid: And whereas, &c. [Go on as in

the Court, states that although

he seized goods, &c. to the value of eighteen pounds, and might have sold them for their real value, yet he levied only five pounds five shillings and sixpence, and no more.

first

first Count to the end of the recital of the writ and delivery thereof to the sheriff, and then go on as follows]; by virtue of which said last mentioned writ the said Edmund, as such sheriff as aforesaid, afterwards and before the return of the said last-mentioned writ, to wit, on the day and year last aforesaid, within his bailiwick, as such sheriff as aforesaid, to wit, at H. aforesaid, in the said county of Hereford, seized and took divers other goods and chattels of the said William Carpenter to a large amount or value, to wit, to the amount of eighteen pounds of lawful money of Great Britain: And the said John in fact saith, that although the said Edmund, so being such sheriff as aforesaid, could and might have sold the said goods and chattels for the real and true value thereof, being a large sum of money, to wit, the sum of eighteen pounds, under and by virtue of the said last-mentioned writ, and have thereby levied so much of the said last mentioned damages so recovered by the said John as aforesaid, to wit, at Hereford aforesaid, in the said county of Hereford; yet the said Edmund, so being such sheriff as aforesaid, not regarding the duty of his said office of sheriff, but contriving and fraudulently intending to hurt, injure, and damage the said John in this behalf, and to deprive him of his aforesaid damages, did not sell or dispose of the said goods and chattels so by him seized and taken under and by virtue of their said last-mentioned writ, for their real and true value, and thereby levy so much of the said last-mentioned damages so recovered by the said John as aforesaid, as the said value of the said goods and chattels amounted unto, but on the contrary afterwards, and before the return of said last-mentioned writ, to wit, on the day and year last aforesaid, at H. aforesaid, in the said county of H. sold and disposed of the said last-mentioned goods and chattels of the said William Carpenter, so seized by him the said Edmund as aforesaid for a much less sum of money than their real and true value, to wit, for the sum of five pounds five shillings and sixpence and no more, and thereof levied such sum of money under and by virtue of the said last-mentioned writ, and in part of the damages so recovered by the said John as last aforesaid and no more, to wit, at H. aforesaid, in the county of H. aforesaid: And the said John in fact further says, that at the return of the said last-mentioned writ, &c. [as in first Count to the end of the return of the said writ]; by means of which said several last-mentioned premises the said John is greatly injured, and has been hindered and prevented from obtaining a large part of the damages so by him recovered as last aforesaid, and is likely wholly to lose the same, to wit, at H. aforesaid, in the said county of Hereford: And whereas, &c. [as in first Count to the end of the recital of the writ, and the delivery thereof to the sheriff, then proceed as follows]; by virtue of which said last-mentioned writ he the said Edmund, as such sheriff as aforesaid, afterwards and before the return of the said last-mentioned writ, to wit, on the day and year last aforesaid, within his bailiwick as such sheriff as aforesaid, to wit, at H. aforesaid, in the said county of Hereford, seized and took into his

3d Count, states seizure and levy of goods, &c. to the value of 5l 5s 6d part &c. but had not money before, &c. at the return, &c. and false return.

4th Count, states seizure of goods sufficient, but through negligence suffered great part of same to be stolen, taken away, &c. only levied 5l. 5s. 6d. part, &c. and false return.

hands and possession as aforesaid divers other goods and chattels of the said William Carpenter of a large value, to wit, of the value of five pounds five shillings and sixpence, and thereof then and there levied the sum of five pounds five shillings and sixpence, parcel of the said damages so recovered by the said John as last aforesaid, and in the said last-mentioned writ specified; yet the said Edmund, so being such sheriff as aforesaid, not regarding the duty of his said office of such sheriff as aforesaid, but contriving and fraudulently intending wrongfully and unjustly to hurt, injure, and damnify the said John in this behalf, and to deprive him of a great part of the said damages so by him recovered as last aforesaid, and of the means of recovering the same, had not the said sum of five pounds five shillings and sixpence so by him levied as last aforesaid, before our said lord the king at Westminster, to render to the said John in part of the damages so by him recovered as last aforesaid at the return of the said last mentioned writ, and according to the exigency thereof, nor hath he paid the said sum of five pounds five shillings and sixpence, or any part thereof, to the said John, but hath therein wholly failed and made default, to wit, at H. aforesaid, in the said county of Hereford aforesaid: And the said John in fact further saith, that at the return of the said last-mentioned writ, &c. [as in the first Count to the end of the return of the writ]; by means of which said last-mentioned premises, the said John is further injured and damnified, and has been hindered and prevented from obtaining a large part of the damages so by him recovered as last aforesaid, and is likely wholly to lose the same, to wit, at H. aforesaid, in the said county of Hereford: And whereas, &c. [as in first Count, to the end of recital of the writ, and the delivery thereof to the sheriff, and then proceed as follows]; by virtue of which said last-mentioned writ, the said Edmund, so being such sheriff as aforesaid, afterwards and before the return of the said last-mentioned writ, to wit, on the day and year last aforesaid, within his bailiwick, to wit, at H. aforesaid, in the county of Hereford, seized and took divers other goods and chattels of the said William Carpenter, of a large value, into his hands and possession, as such sheriff as aforesaid, under and by virtue of the said last-mentioned writ and for the purpose in the said writ mentioned, and could and might have executed the said writ thereon; yet the said Edmund, so being such sheriff as aforesaid, not regarding the duty of his said office of such sheriff as aforesaid, but contriving and fraudulently intending wrongfully and unjustly to hurt, injure, and damnify the said John in this behalf, and to deprive him of a great part of the damages by him recovered as last aforesaid, and of the means of obtaining the same whilst the said last mentioned goods and chattels remained in his custody under the said seizure thereof, and before the return of the said last-mentioned writ, to wit, on the day and year last aforesaid, and on divers other days and times between that day and the day of the return of the said last-mentioned writ, so negligently, carelessly, and incautiously behaved, conducted, and demeaned himself in the execution of his said office of sheriff as aforesaid, and took so little and such

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bad care of the said goods and chattels so by him seized and took in execution under and by virtue of the said last-mentioned writ as aforesaid, that the whole of the said goods and chattels, except goods and chattels to the value of five pounds five shillings and sixpence, were by and through the mere negligence, inattention, and want of care of the said Edmund, as such sheriff as aforesaid, afterwards and before the return of the said last-mentioned writ, purloined, rescued, and carried away out of his custody or possession by some person or persons to the said John unknown, and instead of the whole of the said damages so recovered by the said John as last aforesaid, or so much thereof as the said goods and chattels so seized and took into execution as last aforesaid would have sold for and produced, being levied by the said Edmund as such sheriff as aforesaid, under and by virtue of the said last-mentioned writ, a much less portion of the damages, to wit, the sum of five pounds five shillings and sixpence was levied by the said Edmund, under and by virtue of the said last-mentioned writ, to wit, at H. aforesaid, in the said county of Hereford: And the said John in fact further saith, that at the return of the said last-mentioned writ, &c. [as in first Count to the end of the return of the writ]; by means of which said several last-mentioned premises the said John is further injured, and has been hindered and prevented from obtaining a large part of the damages so by him recovered as last aforesaid, and is likely wholly to lose the same, to wit, at H. aforesaid, in the said county of Hereford: And whereas, &c. [as in first Count, to the end of the recital of the writ, and the delivery thereof to the sheriff, then proceed as follows]: And the said John avers, that the said W. Carpenter, at the time of the delivery of the said last-mentioned writ to the said Edmund, as such sheriff of the said county of Hereford, for execution as aforesaid, and afterwards, and before the return of the said last-mentioned writ, had divers goods and chattels in the bailiwick of the said sheriff of the said county of H. to a large amount, to wit, to the value of the said damages so recovered by the said John as last aforesaid, and in the said last-mentioned writ specified; and that the said Edmund, as such sheriff of the said county of H. as aforesaid, could and might, and ought to have seized the said last-mentioned goods and chattels of the said W. Carpenter, and thereof have fully levied the said damages so recovered by the said John as last aforesaid, and in the said last-mentioned writ specified, as the said Edmund, so being such sheriff as aforesaid, well knew and had notice; yet the said Edmund, not regarding the duty of his said office of such sheriff as aforesaid, but contriving and fraudulently intending wrongfully and unjustly to hurt, injure, and damnify the said John, and to deprive him of a great part of his damages last aforesaid, and of the means of recovering the same, did not at any time before the return of the said last-mentioned writ, seize or take into his possession, as such sheriff as aforesaid, under and by virtue of the said last-mentioned writ, the said last-mentioned goods and chattels of the said W. Carpenter, nor thereof, or of any other goods and chattels of the said W. Carpenter, levy, or cause

5th Count

to be levied the said damages so recovered by the said John as last aforesaid, and in the said last-mentioned writ specified, but on the contrary the said John in fact further saith, that the said Edmund, as such sheriff of the said county of H. as aforesaid, duly seized and took into his possession as such sheriff under the said last-mentioned writ, a very small part of the said last-mentioned goods and chattels of the said W. Carpenter, whereof he levied the sum of five pounds five shillings and sixpence and no more, to wit, at H. aforesaid, in the county of Hereford: And the said John in fact further saith, that at the return of the said last-mentioned writ [as in first Count to the end of the return of the writ]; by means of which said several last-mentioned premises, the said John is further injured, and has been hindered and prevented from obtaining a great part of the damages so by him recovered as last aforesaid, and is likely wholly to lose the same, to wit, at Hereford aforesaid, in the said county of Hereford. Damages fifty pounds. Suit, &c. Pledges, &c.



V. LAWES.

Declaration against sheriffs, for a false return to a writ of *latitat*

1st Count, stating the arrest.

LONDON, to wit. Edmund Fletcher complains against Joseph Martin, esquire, and William Baker, esquire, late sheriffs of London aforesaid, being, &c.; for that whereas one Patrick Tullie, on the nineteenth of June 1771, at London aforesaid, to wit, in the parish of St. Mary-le-bow, in the ward of Cheap, was indebted to the said Edmund in the sum of forty-four pounds of, &c.; and being so indebted, he the said Edmund afterwards, to wit, on the said nineteenth of June 1771, prosecuted out of the court of our sovereign lord the king, before the king himself (the said court then and still being at Westminster, in the county of Middlesex), a certain writ of our said lord the king commonly called a *latitat*, directed to the sheriffs of London; by which said writ, reciting that the said lord the king had commanded the sheriff of Middlesex that he should take Mark Millichen and Patrick Tullie if they might be found in his bailiwick, and them safely keep, so that he might have their bodies before the said lord the king at Westminster at a certain day then past, to answer the said Edmund Fletcher in a plea of trespass, and also to the several bills of the said Edmund Fletcher against the said Mark Millichen for thirty-six pounds upon promises, and also against the said Patrick Tullie for forty-four pounds upon promises, according to the custom of the said court, before our said lord the king to be exhibited, and that the sheriff of M. at that day returned to the said lord the king that the said Mark and Patrick were not found in his bailiwick; and that thereupon on behalf of the said Edmund it was sufficiently attested to the said court before the said lord the king, that the aforesaid Mark and Patrick did run up and secrete themselves in the county of the said sheriffs of London, the said lord the king commanded them the said sheriffs that they should take them the said Mark and Patrick if they might be found in their

their bailiwick, and safely keep them, so that they might have their bodies before the said lord the king at Westminster on Wednesday next after the morrow of All Souls, to answer to the said Edmund of the plea and bills aforesaid, and that they the said sheriffs should have there that writ; which said *writ* afterwards, and before the return thereof, to wit, on the first of August 1771, at London aforesaid, in the parish and ward aforesaid, was *delivered* by the said Edmund to the said J. Martin and William Baker, then sheriffs of London aforesaid, to be by them executed in due form of law; and the said J. and W. so being sheriffs of London aforesaid, afterwards and before the return of the said last-mentioned writ, to wit, on the same day and year last aforesaid, in the parish and ward aforesaid, *took and arrested* the said Patrick by his body, and had him in custody there for the cause aforesaid; nevertheless the said J. and W. not regarding the duty of their said office of sheriffs of London aforesaid, but contriving and intending to deceive the said Edmund, and also to hinder the proceedings of the said Edmund in his suit against the said Patrick, and to deprive him of his remedy for the recovery of the money due and owing to him from the said Patrick as aforesaid, afterwards, to wit, on the same day and year last aforesaid (the said Edmund not being satisfied of the said money so due and owing to him as aforesaid, without the licence and against the will of the said Edmund, and without legal warrant or authority whatsoever), voluntarily permitted and suffered the said Patrick, being in their custody as aforesaid, to escape out of their custody and to go at large, whither he would, to wit, at London aforesaid, in the parish and ward aforesaid, in contempt of the said lord the king, and of his said court here, and to the great injury and oppression of the said Edmund; and the said J. and W. at the return of the said writ, falsely and deceitfully returned on the said writ to the court here, that the said Patrick was not found in their bailiwick, and the said Patrick did not appear in the said court of our said lord the king here, to wit, at Westminster aforesaid, to answer to the said Edmund in the plea aforesaid, by reason whereof the said Edmund was deprived of the means of the recovery of the said sum of money so due and owing to him as aforesaid, and has lost the same, to wit, at London aforesaid, in the parish and ward aforesaid: And whereas also the said Patrick, on the nineteenth of June 1771, at London aforesaid, in the parish and ward aforesaid, was indebted to the said Edmund in other forty-four pounds of like lawful money, and being so indebted as aforesaid, he the said Edmund afterwards, to wit, on the said nineteenth of June 1771, prosecuted out of the said court of our said lord the king, before the king himself (the same court then and still being at Westminster aforesaid, in the said county of Middlesex), a certain other writ of our said lord the king commonly called a *latitat*, directed to the sheriffs of London [here set-out last-mentioned writ the same as the first]; which said writ afterwards, and before the return thereof, to wit, on the said first of August 1771, at London aforesaid,

2d Count,
that they had
defendant in
view.

aforesaid, in the parish and ward aforesaid, was delivered by the said J. M. and William Baker, *who then were sheriffs of London aforesaid*, to be executed in due form of law, and they the said J. and W. being sheriffs of London aforesaid, afterwards and before the return of the said last-mentioned writ, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, *had* the said Patrick *in their view and presence*, so that they the said J. and W. if they had been minded so to do, could and might then and there have taken and arrested the said Patrick by his body, by virtue of that writ; nevertheless the said J. and W. not regarding the duty of their said office of sheriffs of London aforesaid, but contriving and intending to deceive and defraud the said Edmund, and also to hinder the proceedings of the said Edmund in his suit against the said Patrick, and to deprive him of his remedy for the recovery of the said sum of money so due and owing from him the said Edmund to the said Patrick as last aforesaid, did not take or arrest the said Patrick by his body, according to the duty of their said office, and the exigency of the last-mentioned writ, as they ought to have done, but the said J. and W. and each of them, wilfully neglected the execution of the said writ on the body of the said Patrick, and at the said return of that writ they the said J. and W. and each of them, falsely and deceitfully returned on that writ to the court of our said lord the king, before the king himself (the same court then and still being at Westminster aforesaid, in the said county of Middlesex) that the said Patrick was not to be found in their bailiwick, to the great injury and damage of the said Edmund, and the said Patrick did not appear in the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, at the return of the said last-mentioned writ, to answer to the said Edmund in the said plea last aforesaid; by reason whereof, [as before], to the damage, &c. and therefore, &c. Pledges, &c. F. BULLER

TORTS AGAINST PERSONS, OTHER THAN OFFICERS ACTING IN PUBLIC CAPACITIES, RECOGNIZED BY LAW.—AGAINST CARRIERS, NEGLIGENCE.—*See* TORTS FOR NEGLIGENCE, &c. *ante*.

Declaration against the proprietors of a London and Bury stage-coach, for sending a carriage unfit for the journey, which broke down, whereby plaintiff, an outside passenger, had his leg broke.

MIDDLESEX, to wit. Joshua Maulkins, late of , in the county of S. maltster, and Humphry Repton, late of , in the county of Norfolk, gentleman, were attached to answer Robert Jacques of a plea of trespass on the case; and whereupon the said Robert, by A. B. his attorney, complains, that whereas all proprietors of coaches and common carriers, and others keeping coaches, machines, and other carriages for the purpose of carrying and conveying passengers from place to place within the kingdom for hire, are bound by the law of the land to provide and maintain

maintain good, strong, and able carriages, sufficient and proper for the purpose aforesaid: And whereas the said J. and H. on the twenty-fifth of March 1775, at Westminster, in the said county of Middlesex, and long before, were proprietors of a certain common coach or carriage going and passing from L. to B. in the county of S. and so back again from B. aforesaid to L. aforesaid, for the carriage of passengers for hire; yet the said J. and H. well knowing the premises, but wrongfully and injuriously intending to hurt and injure the said R. and not regarding their duty in that behalf, afterwards, to wit, on the twenty fifth of March 1775 aforesaid, at Westminster aforesaid, in the said county, neglected to provide and send a good, strong, and able carriage fit for the carriage and conveyance of passengers from B. aforesaid to L. aforesaid, and did then and there send a certain carriage on the said journey which was wholly unfit to perform the same; by means whereof the said carriage afterwards, to wit, on the same day and year aforesaid, broke down and overturned on the road leading from B. aforesaid to L. aforesaid, to wit, at Westminster, in the said county of M. and by reason thereof the said Robert, who was then and there a passenger on the outside of the said coach, was thrown therefrom upon the ground, and was thereby greatly bruised and hurt, and had his leg broke by the said fall, and suffered and underwent great pain, and was wholly disabled from following and doing his lawful business for a long space of time, to wit, for the space of one year, and was obliged to lay out and expend, and did lay out and expend a large sum of money, to wit, the sum of two hundred pounds, in order to have his leg set and cured, and in the procuring of other necessary assistance and attendance during the said time of his illness and confinement, to wit, at Westminster aforesaid, in the county of M. aforesaid, to the damage of the said Robert of one thousand pounds, and therefore, &c.

F. BULLER.

Trinity Term, 21. Geo. III.

FOR that whereas heretofore, to wit, on, &c. in consideration that the said plaintiff, at the special, &c. of said defendant, had shipped and put on board a certain vessel called, &c. of the said defendant, then lying at a certain quay called, &c. in the port of B. in the county of S. certain goods and merchandizes, to wit, three casks containing a certain large quantity, to wit, three tons weight of iron of him said plaintiff of a large value, to wit, &c. to be safely and securely carried, transported, and carried by water in the said vessel from the aforesaid quay in the port of B. to B. in the county of W. upon freight to be therefore paid by him said plaintiff to said defendant, he the said defendant undertook, &c. safely, &c. to carry, &c. by water in his aforesaid vessel the goods of him said plaintiff from the aforesaid quay at B. aforesaid to B. aforesaid, in the said county of, &c. and there, to wit, at B. aforesaid, safely, &c. to deliver the same to the use of the said plaintiff: And the

Declaration for negligence against a master and owner of a vessel, in losing part of goods belonging to plaintiff, delivered to defendant's care, &c.

(a) See Negligence, *ante*, by Masters and Owners of Ships.

(1) "but he to perform his said last-mentioned promise and undertaking in such respect hath hitherto wholly refused, and still refuses so to do, and the residue of the said last-mentioned goods being of a large value, &c. are still wholly undelivered to him the said plaintiff."

Declaration at the suit of the proprietor of a waggon, against a warehouse keeper, for delivering parcels to other carriers, which had been left with defendant to be delivered to plaintiff to go in his waggon.

said plaintiff in fact saith, that although the said defendant did, after his said receipt of the said goods, &c. of the said plaintiff for the purpose aforesaid, and before the exhibiting this bill, transport, carry, convey, and deliver a part of the aforesaid goods, &c. of said plaintiff, to wit, one of the aforesaid casks, containing one ton weight of the aforesaid iron, according to the tenor and effect of the said promise and undertaking of him said defendant; yet the said plaintiff in fact further saith, that the said defendant not regarding, &c. but contriving, &c. to deceive the said plaintiff in this behalf, hath not as yet safely, &c. carried, &c. the residue of the said goods, &c. of him said plaintiff from the said quay called, &c. at B. aforesaid to B. aforesaid, and there safely, &c. delivered the same to the use of the said plaintiff, according to the tenor and effect of the aforesaid promise and undertaking of said defendant, although a reasonable time for that purpose hath long since elapsed, and although so to do, &c.); (1) *but on the contrary thereof he the said defendant, before the exhibiting, &c. to wit, on, &c. at, &c. so negligently and carelessly managed and conducted himself in the premises. and took so little and such bad care of the said residue of the said goods, &c. of the said plaintiff, that the residue of the said goods, &c. being of a large value, to wit, of, &c. became and were, and still are wholly lost to the said plaintiff, to wit, at, &c.* [2d Count same as the last, only omitting what is in Italic, and inserting in lieu thereof what is in the margin.] [3d and 4th Counts like the first and second; 5th, money had and received; 6th, money laid out. Common conclusion to these Counts]

CITY OF GLOUCESTER AND COUNTY OF THE SAME CITY, to wit. William North complains of Thomas Harman and George David Norman being in the custody, &c. in a plea of trespass on the case; for that said plaintiff, before and at the several and respective times of the committing of the several and respective grievances hereafter mentioned, was, and from thence hitherto hath been, and still is a common carrier of goods and merchandizes in and by a certain waggon of him said plaintiff, from Brecon, in the county of Brecon, to London, by the way of and through the city of Gloucester, for hire and reward, to wit, at the said city of Gloucester and county of the same city: And whereas said defendants, during all the time aforesaid, were and still are the keepers and proprietors of a certain warehouse situate in the said city of Gloucester for the receipt of and safe keeping of goods and merchandizes there delivered for the purpose of their being delivered by them said defendants, as such keepers of said warehouse as aforesaid to such common carriers of goods from said city of G. as the person or persons from time to time delivering such goods and merchandizes have respectively directed and ordered, to wit, at, &c. aforesaid: And said plaintiff in fact saith, that he said plaintiff being such

com-

Common carrier as aforesaid, and said defendants being such keepers as aforesaid, before the committing of the grievance hereafter next mentioned, to wit, on the day of , in the year of Our Lord , at, &c. aforesaid (1) *one* and did respectively deliver to them said defendants, as such keepers of said warehouse as aforesaid, to be by them delivered to said plaintiff as such common carrier as aforesaid, for the purpose of carriage and conveyance from the said city of G. in and by his aforesaid waggon for hire as aforesaid, to wit, at, &c. aforesaid: And said plaintiff in fact further saith, that although said defendants had and received said goods and chattels so to them delivered as aforesaid for the purpose aforesaid, to wit, at, &c. aforesaid, and although the aforesaid waggon of him said plaintiff did afterwards, to wit, on the day and year aforesaid, and on divers other days and times between that day and the exhibiting, &c. travel and pass through the said city of G. in its way to L. aforesaid, and although said plaintiff was, on those several days and times, ready and willing to have accepted and received said goods and chattels so delivered to the said defendants for the purpose aforesaid, and would have carried and conveyed same in and by his aforesaid waggon, according to the directions of the several and respective persons delivering the same to said defendants as aforesaid; and although said defendants, so being such keepers of the said warehouse as aforesaid, ought to have delivered such goods and chattels to said plaintiff, as such common carrier as aforesaid, and for the purpose aforesaid, according to the directions and orders of the several persons delivering the same to said defendants as aforesaid, to wit, at, &c. aforesaid; yet said plaintiff in fact further saith, that said defendants, so being such keepers of said warehouse as aforesaid, and well knowing all and singular the premises aforesaid, but contriving and intending wrongfully and unjustly to injure and damnify said plaintiff, so being such common carrier as aforesaid, did not on any or either of those several days and times aforesaid, or at any other time whatsoever, deliver said goods and chattels so to them delivered as aforesaid, or any or either of them, or any part thereof to said plaintiff, as such common carrier as aforesaid for the purpose aforesaid, or for any other purpose whatsoever, but wrongfully and unjustly omitted and neglected so to do, and on the contrary thereof, after the delivery of such goods and chattels to them said defendants as aforesaid, to wit, at, &c. aforesaid, wrongfully and unjustly delivered said goods and chattels to other and different carriers of goods and chattels from said city of G. who afterwards carried and conveyed the same; whereby and by means of which said several premises, said plaintiff lost and was deprived of all profit, benefit, and advantage that would have arisen and accrued to him from the carriage of such goods, merchandizes, and chattels in and by his said waggons as aforesaid, to wit, at, &c. aforesaid.

(1) "divers persons whose names are unknown to said plaintiff,"

V. LAWES.

W. H.

INCORPOREAL RIGHTS.

Declaration by a
freeman of N.
claiming a right
of common as
freeman resident
and paying scot
and lot against
defendant for
disturbing his
right by digging
pits, erecting
houses, &c. and
inclosing, &c.

W. H. } FOR that whereas the town and county of the town
against } of N. is, and from time whereof the memory of man is
S. R. } not to the contrary, hath been an ancient town and bo-
rough, in which said town and county of the said town of N. afore-
said there was, and for all the time aforesaid, whereof the memory of,
&c. there hath been a body politic and corporate known by divers
names of incorporation, and amongst other things by the name of
mayor and burgeses of the town of N.: And whereas the said
body corporate, for all the times whereof the memory of, &c.
have had, and have used and been accustomed to have, and of
right ought to have had, and still of right ought to have for each
of the several burgeses of the said town occupying and inhabiting
in any messuage within the said town of N. common of pasture in
and upon certain fields called, &c. situate and being at, &c. in,
&c. for three heads of large cattle, from Lammas-day, according
to the ancient computation or old style heretofore used in England,
until All Saints day according to the same style then next follow-
ing in every year at his and their will and pleasure: And whereas
the said plaintiff, before and at the time of the committing of the
grievance hereafter next mentioned, to wit, on, &c. and long
before, was, and continually from thence hitherto hath been, and
still is one of the burgeses of, &c. and for all the time last-men-
tioned was possessed of, occupied, inhabited, and dwelt, and still
doth inhabit and dwell in a certain messuage within the said bo-
rough, and by reason of the premises he the said plaintiff, during
all the time last aforesaid, had and enjoyed, and of right ought to
have had and enjoyed, and still of right out to have and enjoy
common of pasture in and upon the above-mentioned fields called,
&c. at the time and in manner in that behalf above-mentioned:
And whereas also the said body corporate, for all the said time
whereof the memory of, &c. have had, and have used and been
accustomed to have, and of right ought to have, and still of right
ought to have for each of the several burgeses of the said town
occupying and inhabiting in any messuage within the said town,
and paying scot and lot, common of pasture in and upon the said
fields called, &c. situate and being at, &c. for three heads of large
cattle, from Lammas-day, &c. until, &c. every year at his and
their free will and pleasure: And whereas the said W. before and
at the time of the committing of the grievance hereafter men-
tioned, to wit, on, &c. and long before, was, and continually from
thenceforth hitherto hath been, and still is one of the burgeses of
the said town of N. and for all the time last mentioned was pos-
sessed of, occupied, inhabited, and dwelt, and still doth inhabit
and dwell in a certain messuage within the said borough, and paid
and pays scot and lot there, and by reason of the premises he the
said W. during all the time last aforesaid, had and enjoyed, and
of

of right ought to have had and enjoyed, and still of right ought to have and enjoy common in and upon the above-mentioned fields called, &c. at the time and in manner above-mentioned: And whereas also the said W. before and at the time of the committing of the grievance hereafter next mentioned, to wit, on, &c. and long before, was, and continually from thenceforth hitherto hath been, and still is lawfully possessed of a certain messuage, with the appurtenances, within the said borough of N. in the said county, and by reason of such his possession thereof, he the said W. during all the time last aforesaid, hath had and enjoyed, and ought of right to have had and enjoyed, and still of right ought to have and enjoy common of pasture in and upon the above-mentioned fields called, &c. at the time and in manner above-mentioned: And whereas the said W. before and at the time of the committing of the grievances hereafter next mentioned, to wit, on, &c. and long before, was, and continually from thenceforth hitherto hath been, and still is lawfully possessed of and in a certain other messuage, with the appurtenances, situate and being at, &c. in, &c. and paid and pays scot and lot there, and by reason of such his possession thereof, during all the time last aforesaid, hath had and enjoyed, and of right ought to have had and enjoyed, and still of right ought to have and enjoy common of pasture in and over the said fields at the time and in manner above-mentioned; yet the said defendant, well knowing the premises, but designing and intending to injure the said plaintiff, and unjustly to deprive him of the benefit of his said common of pasture in the said fields, heretofore, and whilst the said plaintiff was entitled to such common respectively as aforesaid, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting the bill of the said plaintiff in this behalf, at the town and county aforesaid, did wrongfully and injuriously sink, dig, and make, and caused and procured to be sunk, dug, and made divers, to wit, fifty large pits and holes in the said fields, and wrongfully and injuriously dug up, subverted, and spoiled divers, to wit, three acres of land in the said fields, and built and erected, and caused to be built and erected divers, to wit, ten large buildings in the said fields, each building being of the height of two hundred feet, and of the breadth of one hundred feet, in and upon the said fields, and likewise placed and made divers hedges, mounds, and fences in and upon the said fields, and also wrongfully and injuriously dug and made, and caused to be dug and made divers large ditches and trenches therein, and also wrongfully and injuriously inclosed, separated, and divided a great part, to wit, two acres of the said field from the residue thereof, and hath wrongfully and injuriously kept, maintained, and continued the said large buildings, mounds, hedges, fences, ditches, trenches, pits, and holes so erected, made, and dug upon the said fields and the said three acres thereof so inclosed, separated, and divided from the residue thereof as aforesaid from the digging, building, and making the
same

same respectively during the times that the said W. had such right of common there as aforesaid, to wit, until and after the said feast of, &c. by reason whereof the said W. when he ought to have had common of pasture there as aforesaid, to wit, from, &c. to, &c. could not have and enjoy his said right of common in the said field in so ample and beneficial a manner as he had before been accustomed, and during those spaces of time ought to have had and enjoyed the same, but during all those times was thereby deprived and lost the benefit and advantage thereof, and the profits which would have accrued to him from the same, to wit, at, &c.: And the said W. further says, that whilst he the said W. was entitled to such common respectively as aforesaid, the said S. well knowing the premises, but designing and intending to injure the said W. and unjustly to hinder and deprive him of the benefit of his common of pasture in the said fields, to wit, on, &c. and from thence until the exhibiting the bill of the said plaintiff in this behalf, and during the time when the said W. ought of right to have had and enjoyed his said common of pasture in the said fields, at N. aforesaid, wrongfully and unlawfully kept and continued upon the said fields, to wit, fifty other large pits and holes, before that time wrongfully and injuriously dug, sunk, and made, and wrongfully and injuriously kept and continued upon the said fields divers other buildings, of great length and breadth, to wit, two hundred, &c. which had been before then wrongfully and injuriously built, erected, and fixed thereon, and wrongfully and injuriously kept and continued upon the same fields divers large hedges, mounds, fences, ditches, and trenches, before then wrongfully and injuriously made, placed, and sunk in the said fields, and thereby wrongfully and unlawfully kept and continued a large part, to wit, two acres of the said fields divided and separated from the residue thereof; by reason of which said several last-mentioned premises the said W. when he ought to have had and enjoyed his said common of pasture there, to wit, from, &c. could not have and enjoy his said common of pasture in the said fields in so ample and beneficial a manner as he had before then been accustomed, and during all that time ought to have had and enjoyed the same, but during all those times last aforesaid was deprived of the profit, benefit, and advantage thereof, to wit, at, &c. Damages two hundred pounds.

E. WIGLEY.

Trinity Term, 29. Geo III.

Declaration against defendant for depasturing cattle on a common; *per quod*, the plaintiff could not enjoy his right of common as he ought.

DEY
against
HANKES.

YORKSHIRE, to wit. J. Dey complains of Samuel Hankes, being, &c.; for that whereas the said plaintiff, on the first of January 1788, and before was, and continually from thenceforth hitherto hath been, and still is lawfully possessed of and in a certain ancient messuage or cottage, and divers, to wit, one hundred acres of land, with the appurtenances, situate and being in the township of Norton, in the said county of

of York, and by reason thereof the said plaintiff, during all the time aforesaid, had, and of right ought to have had, and still of right ought to have common of pasture in and upon a certain large waste or common called the Great Common, otherwise Norton Great Common, situate and being in the said township of Norton, for all his commonable cattle, levant and couchant, in and upon the said messuage or cottage and land with the appurtenances every year at all times of the year, as to the said messuage or cottage and land with the appurtenances belonging and appertaining; yet the said S. well knowing the premises, but contriving and maliciously intending to injure and prejudice the said plaintiff in this behalf, and to deprive him of the benefit and advantage of his said common of pasture belonging to his said messuage or cottage and land with the appurtenances, whilst he the said plaintiff was so possessed of his said messuage or cottage and land with the appurtenances as aforesaid, and had such right of common of pasture as aforesaid, to wit, on the second of January 1788, and on divers other days and times between that day and the day of exhibiting the bill of said plaintiff in this behalf, at the township of Norton aforesaid, wrongfully and injuriously eat up, trod down, depastured, and spoiled the grass there growing and being in the said waste or common with divers horses, mares, geldings, cows, bulls, oxen, heifers, sheep, and lambs, to wit, one hundred horses, one hundred mares, &c. &c. whereby the said J. D. could not for a long time, to wit, during all the time last aforesaid, have, use, or enjoy his said common of pasture in and upon the said waste or common in so ample and beneficial a manner as he ought to have had and enjoyed the same, but during all that time was deprived of great part of the benefit and profit thereof, to wit, at the township of Norton aforesaid: And whereas also [same as first, except instead of claiming the common of pasture on the Great Common, otherwise the Norton Great Common, say "Dryhurst Common"]; wherefore the said John says that he is injured, and hath sustained damages to the value of twenty pounds; and therefore he brings suit, &c.

Plea. General issue to the first Count. And the said S. as to the residue of the said premises in the said declaration mentioned, saith nothing in bar or preclusion of the said action of the said J. in that behalf, whereby the said J. remains thereof undefended against the said S. therefore the said J. ought to recover his damages against the said S. by reason of the residue of the said premises in the said declaration mentioned, but because it is unknown whether the said S. will be convicted of the premises whereon the said issue is above joined or not, and if he shall be convicted thereof, it is convenient that there should be but one taxation of damages in this suit, let the jury of the damages between the said John and Samuel, by reason of the residue of the premises in the said declaration mentioned, be stayed until the said issue between the said J. and the said S. shall be determined, and as well to try the said issue

Plea, general
issue. 2d Count,
nil dict.

Unica taxatio.

issue as also to enquire what damages the said J. hath sustained by occasion of the residue of the said premises in the said declaration mentioned, let a jury come, &c.

This cause was tried at summer assizes 1789, before Judge Wilson and a special jury, when a verdict was obtained by defendant on the issue, and the damages on the residue were assessed at sixpence.

Trinity Term, 29. Geo. III.

Declaration against defendant for pulling down a bridge over which the plaintiff had a right of way, for good, &c.

KNATCHBULL, WIDOW, } SOMERSETSHIRE, to wit.
 against J. K. widow, complains of T. S. J.
 JOLLIFFE, ESQUIRE. } Esquire, being, &c.; for that whereas the said Judith, on the first of June 1789, and long before, was, and from thenceforth hitherto hath been, and still is lawfully possessed of and in a certain messuage or dwelling house, with the appurtenances, called and known by the name of house, situate, lying, and being in, &c. and by reason thereof she the said J. during all the time aforesaid, hath been used and accustomed to have, and of right ought to have had, and still of right ought to have for herself and servants a certain way from her said messuage or dwelling-house upon and over a certain bridge erected and placed over and across a certain rivulet or brook dividing the said parish of B. from the parish of K. and which said bridge, during all that time, ought to have remained and continued, and still of right ought to remain and continue so erected and placed over and across the said rivulet or brook into, through, and over a certain lane, situate, lying, and being in the parish of K. in the said county, leading from the said bridge unto and into the king's public highway, leading from to in the said county, and so back again from the said king's public highway unto, through, and over the said lane unto and over the said bridge to the said messuage or dwelling-house of the said J. to pass and repass on foot and with horses, carts, and carriages, at all times, at her free will and pleasure, and belonging and appertaining to the said messuage or dwelling-house with the appurtenances; nevertheless the said T. S. well knowing the premises, but contriving and wrongfully devising and intending to hinder and deprive the said J. of the said way, afterwards, and whilst she the said J. was so possessed of said messuage or dwelling-house as aforesaid, to wit, on the said first of June 1789, and on divers other days and times, &c. at the parish of aforesaid, in the said county, wrongfully and injuriously pulled down, threw down, prostrated, demolished, and destroyed, and caused to be pulled down, thrown down, prostrated, demolished, and destroyed the said bridge, and the same wrongfully and injuriously kept and continued, and caused and procured to be kept and continued so pulled down, thrown down, prostrated, demolished, and destroyed from thenceforth hitherto; by reason and means of which said premises she the said J. during all or any part of that time, could not use, have, or enjoy the said way in so full and beneficial a manner as she ought to have had and enjoyed the same, but

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but during all that time was, and she is wholly hindered and deprived thereof, and during all that time hath wholly lost all the profit, benefit, and advantage thereof, to wit, at the parish of K. aforeaid, in the said county; to the damage, &c.

H. DAMPIER.

DIXON
against

BARRASS AND ANOTHER.

CUMBERLAND, to wit.
H. D. complains of W. B. and D. S. being, &c.; for that whereas

Declaration for obstructing plaintiff's right of way by erecting a gate.

the said H. on the first of March 1787, and long before, was, and continually from thenceforth hitherto hath been, and still is lawfully possessed of a certain close called Long Meadow, situate, lying, and being in the parish of , in the county of C. and the said H. on the first of March, in the year aforeaid, and continually from thenceforth hitherto had, and of right ought to have had for himself and his servants a way from a certain highway, in the parish aforeaid, in the county aforeaid, called the Old Way, or way to into, through, and over a certain lane in the parish aforeaid and county aforeaid unto the said close of the said Henry called Long Meadow, and so back again from the said close called Long Meadow to the said highway, to go, return, pass, and repass, on foot, and with cattle, carts, and other carriages, every year, at all times of the year, as they had occasion, as to the said close called Long Meadow belonging and appertaining; yet the said W. and D. well knowing the premises, but wrongfully and injuriously contriving and intending to hinder and deprive the said Henry of his said way, while the said Henry was so as aforeaid possessed of the said close called Long Meadow, to wit, on the thirteenth of May, in the year aforeaid, wrongfully and injuriously obstructed and stopped the aforeaid way of the said Henry, and placed and fixed a certain gate across the same way, and fastened the same with a certain lock, and continued the said gate there so fixed and fastened, whereby the said Henry was wholly deprived of the enjoyment of his said way for a long space of time, to wit, from the thirteenth of May, in the year aforeaid, until the exhibiting the bill of the said Henry: And whereas the said Henry, on the first of March, in the year aforeaid, and long before, and from thenceforth hitherto hath been, and still is lawfully possessed of two other closes, to wit, one other close called Close, and the other close called , situate, lying, and being in the parish aforeaid; in the county aforeaid; and the said Henry, on said first of March, in the year aforeaid, and continually from thenceforth hitherto had, and of right ought to have for himself and his servants a way from the said close called Wood End Close into and across a certain other lane lying between the said close called Wood End Close into and across a certain other lane lying between the said close called the Wood End Close and the said close called , and from thence upon and over a certain bridge and causeway to the said close called , and from thence back again upon and over the

2d Count, for obstructing plaintiff's way over a bridge and through a lane by erecting hedges and pulling down the bridge.

the said bridge or causeway into and across the said last-mentioned lane to the said close called Close, to go, return, pass, and repass on foot every year and at all times of the year as they had occasion to the said two last-mentioned closes of the said Henry belonging and appertaining; yet the said W. and D. well knowing the premises last above-mentioned, but wrongfully and injuriously contriving and intending to deprive the said Henry of his said last-mentioned way, whilst the said H. was so as aforesaid possessed of the said last-mentioned closes, to wit, on the eleventh of May, in the year aforesaid, obstructed and stopped the said last-mentioned way of the said Henry by certain hedges and banks erected and made in and across the same, and then and there took up and removed the said bridge and causeway, and continued the said last-mentioned way so obstructed and stopped by the said hedges and banks, and the said bridge so taken up and removed for a long space of time, to wit, from the said eleventh of May, in the year aforesaid, until the exhibiting the bill of the said Henry, and thereby during all that time deprived the said Henry of the enjoyment of his said last-mentioned way: And whereas also the said Henry, on the first of March, &c. [3d Count like the second as to the gravamen, except omitting any mention of the bridge, and claiming the way *on foot and with cattle*]; yet the said defendants, well knowing the premises last aforesaid, but wrongfully and injuriously contriving and intending to deprive the said Henry of his said last-mentioned way, while the said Henry was so as aforesaid possessed of the said two last-mentioned closes, to wit, on the twenty-ninth of March in the year aforesaid, made, set up, and placed a certain hedge and bank in and across the said last-mentioned way, and continued the said last-mentioned hedge and bank so there set up and placed, whereby the said Henry was thereby wholly deprived of the enjoyment of his said last-mentioned way for a long space of time, to wit, from thenceforth until the exhibiting the bill of the said Henry: And whereas also the said Henry, on the first of March, in the year aforesaid, and long before, was, and still is possessed of a certain other close called , situate, &c. &c. contiguous and next adjoining to a certain other lane leading from a certain farm called , in the parish aforesaid, in the county aforesaid, to a certain piece or parcel of waste ground situate, lying, and being in the parish aforesaid, in the county aforesaid, which said last-mentioned close, at the north east corner thereof, during all the time last aforesaid, hath lain open towards the last-mentioned lane, and not separated therefrom by any inclosure: And whereas on the said first of March, in the year aforesaid, and long before, there was, and still ought to be a certain gate placed and fixed at the north east corner of the said last-mentioned close across the said last-mentioned lane, and separating and dividing the said last-mentioned lane from the said piece or parcel of waste ground, whereby cattle being in the said piece or parcel of waste ground, have been prevented and hindered, during all that time, from escaping and straying out of the said piece

piece or parcel of waste ground into the said last-mentioned lane, so lying contiguous and next adjoining to the said last-mentioned close, and from thence into the said last-mentioned close; yet the said defendants well knowing, &c. and contriving, &c. whilst the said Henry was so possessed of the said last-mentioned close as aforesaid, to wit, on the twenty-sixth of March, in that year, wrongfully and injuriously took away and removed the said last-mentioned gate from the said north east corner of the said last-mentioned close, and continued the said last-mentioned gate so taken away and removed for a long space of time, to wit, from the twenty-sixth of March, in the year aforesaid, until the exhibiting the bill of the said Henry, and by reason thereof divers cattle, to wit, horses, &c. of divers persons unknown to the said Henry, being in the said piece or parcel of waste ground, on the said twenty-sixth of March in the year aforesaid, and on divers other days, &c. escaped and strayed on those several days and times out of the said piece or parcel of waste ground into the said last-mentioned lane so lying contiguous and next adjoining to the said last-mentioned close, and from thence into the said last-mentioned close, and there on several days and times were feeding and depasturing on the grass of the said Henry there then growing in the said last-mentioned close, and then and there did damage to the said last-mentioned close, and the said Henry was put to great trouble and expence in and about the driving of the said cattle so escaped as aforesaid out of his said last-mentioned close; and so the said Henry saith that he is injured, and hath sustained damages to the value of pounds.

Non cul. pleaded, and on trial at summer assizes 1789, juror was withdrawn, and cause referred.

6. Geo. III.

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| <p>COULTHARD } CUMBERLAND, to wit. J. R. late of
 <i>against</i> }
 ROBINSON. } answer J. C. of a plea of trespass on the case, &c.;</p> | <p>in the county aforesaid, yeoman, was attached to
 whereupon the said plaintiff, by A. B. his attorney, complains,
 that whereas the said plaintiff, on the first day of June 1765, and
 long before, was, and continually from thenceforth hitherto hath
 been, and still is lawfully possessed of a certain ancient messuage,
 with the appurtenances, called Orchard House, situate and being
 in the parish of , in the county aforesaid, and by reason of his
 possession thereof hath been, during all the time aforesaid, and now
 is lawfully entitled unto, and of right ought to have had, and still
 of right ought to have common of turbary, to wit, to cut and dig
 turfs and peats in, upon, and throughout a certain large tract of
 ground called , in the parish aforesaid, every year and all times of
 the year, for necessary fuel to be spent, burnt, and consumed by
 the said J. in the said ancient messuage with the appurtenances be-
 longing and appertaining: And whereas the said J. so being pos-
 sessed</p> | <p>Declaration <i>as</i>
 <i>against defendant</i>
 for preventing
 plaintiff from
 enjoying his
 common of tur-
 bary. by hinder-
 ing plaintiff and
 his servants by
 force from en-
 tering on the
 common.</p> |
|---|---|--|

as aforesaid, on the first of July, in the year aforesaid, at the parish aforesaid, employed and directed divers of his servants to cut and dig peat for the said plaintiff in the said tract of ground called, &c. and his said servants had begun and attempted to dig and cut peat there for the said plaintiff for necessary fuel to be spent, burnt, and consumed by him in the said last-mentioned ancient messuage with the appurtenances, and would then and there have further proceeded in cutting and digging of peat thereof for the said plaintiff for the purpose last aforesaid if the same servants had not been prevented and hindered from so doing by the said plaintiff; nevertheless the said defendant, well knowing the last-mentioned premises, but maliciously contriving and devising to injure the said plaintiff in this behalf, and to prevent and hinder his said last-mentioned servants from further proceeding in their said last-mentioned work and employment, while the said plaintiff was so possessed of his said last-mentioned ancient messuage with the appurtenances as aforesaid, and whilst his said last-mentioned servants were so employed as aforesaid, to wit, on the same day and year last aforesaid, in the parish aforesaid, without any lawful authority in that behalf, with force and arms, obstructed, hindered, and prevented the same servants to cut and dig peat in the said tract of ground called for the said plaintiff, to be spent, burnt, and consumed by him in his said last-mentioned ancient messuage with the appurtenances as they then and there otherwise could and would have done, but the said servants of the said plaintiff were then and there compelled and forced by the said John, to forbear and desist from that work and employment, whereby he said plaintiff not only lost and was deprived of the service of the said last-mentioned servants for a long space of time, to wit, for the space of six hours then next following, but was also greatly obstructed and disturbed in the enjoyment of his said privilege and benefit of cutting and digging peat in the said tract of ground called, &c. for the purpose last aforesaid, and was prevented and hindered from enjoying the same in so ample and beneficial a manner as he otherwise could and ought to have done; wherefore the said plaintiff saith he is injured, &c.

A. CHAMBRE.

Declaration against the rector of a parish for not repairing a cart way leading to plaintiff's house, which he is bound by prescription to do in respect of his glebe.

SUSSEX, to wit. Joseph Marlett, esquire, complains of the reverend Edward Fredcroft, clerk, being, &c.; for that whereas the said J. on the first day of January, A. D. 1777, and long before, was, and from thence hitherto hath been, and still is lawfully possessed of and in a certain messuage or dwelling house commonly called Manthem House, and divers, to wit, one hundred acres of land thereunto belonging, situate and being in the parish, &c. in the said, &c. and by reason thereof he the said J. during all the time aforesaid, of right ought to have had, and still of right ought to have *a certain way* from a certain gate during all the time aforesaid erected, standing, and being in a certain lane called , in, &c. aforesaid, the said gate being near unto a cer-
tain

tain road or highway leading from the said gate to a certain place called Broodbridge Heath, in, &c. aforesaid, unto the said messuage and land of the said Joseph, and from thence back again from the said messuage and land of the said Joseph in, along, and through the said lane called to the said gate, to go, return, pass, and repass on foot and on horseback, and with his waggons, horses, carts, and other carriages, every year and at all times of the year, at his free will and pleasure: And whereas the said Edward, during all the time aforesaid, was, and still is rector of the rectory of the parish church of Hitchinfield, otherwise Itchinfield, in, &c. aforesaid, and as such in right of his said rectory was seised in his demesne as of fee of and in divers, to wit, one hundred acres of glebe land, situate, lying, and being in, &c. that is to say, a great part thereof, to wit, one half thereof on one side of the said lane, and the residue thereof on the other side of the said lane: And the said J. further saith, that he *the said E. and all other the rectors of the said rectory for the time being, from time whereof the memory of man is not to the contrary, until the neglect thereof hereinafter mentioned, by reason of such their seizin of the said glebe land have maintained and repaired, and have been used and accustomed to maintain and repair, and during all the time aforesaid of right ought to have maintained and repaired, and still of right ought to maintain and repair the said way for a certain length, to wit, for the length of one hundred and forty-three rods, that is to say, from the said gate towards the said messuage and land of the said J. unto a certain post standing and being on the west side of the said lane at the corner of a certain close called Ashford, in, &c. that is to say, at the said distance of one hundred and forty three rods from the said gate, when, and so often as need or occasion hath been or required, or may be or require; yet the said E. well knowing, &c. but contriving, &c. the said Joseph in this behalf, and to deprive him of the use, benefit, and advantage of his said way, he the said J. in fact further saith, that whilst he the said J. was so possessed of his said messuage or dwelling-house and land, with the appurtenances, and whilst he the said E. was so rector of the said rectory and seised of the aforesaid glebe land, to wit, on, &c. aforesaid, the said part of the said way before particularly mentioned was ruinous, foundurous, miry, broken, and in great decay for want of due reparation and amendment thereof, he the said E. wrongfully and unjustly suffered and permitted to be and continue so ruinous, &c. from thence for a long time, to wit, hitherto, and the said part of the said way is still ruinous, &c. for want of due reparation and amendment thereof by the said Edward; by means of which said several premises he the said J. during all that time there, could not have the use or enjoyment of his said way in so large, ample, and beneficial a manner as he during the time last aforesaid of right ought to have had and enjoyed the same, but by means of the said premises hath lost and been deprived of the greater part of the use, benefit, and advantage thereof, to wit, at, &c. aforesaid.* [2d Count, one hundred and thirteen rods to a

gate on the west side of the said lane leading into a close called Ashford, in the parish aforesaid. 3d Count claims a way to the plaintiff's premises, and without saying who is to repair, shews that the defendant with horses, &c. had used the said way, and damaged and rendered it impassable. 4th and 5th Counts like the two first, but adding that the defendant had a right to use the said part of the said way as well as the said plaintiff, and by reason thereof, and of the seisin of his glebe land, he ought to repair, and that he used but had not repaired the said way.

I. MORGAN.

Hilary Term, 29. Geo. III.

Declaration for
obstructing
plaintiff in the
use of his pew,
by breaking off
the lock and af-
fixing another.

SUSSEX, to wit. J. M. late of, &c. was attached to answer J. R. of, &c. that whereas the said J. R. on, &c. and continually from thenceforth hitherto hath been, and still is lawfully possessed of and in a certain messuage or dwelling-house, with the appurtenances, situate, lying, and being in the parish of, &c. in which said messuage or dwelling-house he the said J. R. hath, during all the time aforesaid, inhabited and dwelt, and still doth inhabit and dwell with his family, to wit, at, &c. and by reason thereof the said James R. during all the time aforesaid, had, and of right ought to have had, and still of right ought to have for himself and his family inhabiting in the said messuage or dwelling-house with the appurtenances, the use and benefit of a certain pew in the parish church of, &c. *to wit, a certain pew situate in the little north aisle of the said church*, to hear and attend divine service celebrated in the said church from time to time whenever divine service hath been during that time celebrated in the said church, as belonging to the said messuage or dwelling-house with the appurtenances; nevertheless the said J. M. well knowing the premises, but contriving and wickedly and maliciously designing and intending to injure the said J. R. and to deprive him of the use and benefit of the said pew, whilst he the said J. R. † was so possessed of and inhabited his said messuage or dwelling-house, and possessed of the said pew thereto appertaining, to wit, on, &c. at, &c. with force and arms, broke, wrenched, and tore off a certain lock then and there affixed to the door of the said pew of the said J. R. and with which the same was then and there fastened, and then and there took possession of the same, and put and affixed to the door of the said pew a certain other lock of him the said J. M. and from thence hitherto hath excluded the said J. R. from the use and enjoyment of his said pew, and hath at divers times during the time aforesaid, when divine service hath been celebrated in the said church, sat in the said pew, and hath during these times prevented and hindered the said J. R. and family at these times inhabiting the said messuage or dwelling-house from sitting in the said pew for the purpose aforesaid, whereby the said J. R. could not have or enjoy the said pew for himself and his family inhabiting the said messuage or dwelling-house during the time aforesaid, but
hath

hath during the time aforesaid been deprived of the use and benefit thereof, and hath been otherwise greatly disturbed, disquieted, and molested in the use and enjoyment thereof, to wit, at, &c.: And ^{2d Count, sitting} whereas, &c. [go on with this Count same as the first till you ^{in pew and ex-} come to this mark ‡, only omitting what is in *Italic*, then pro- ^{cluding plaintiff.} ceed as follows], inhabited the said last-mentioned messuage or dwelling-house with his family, to wit, on, &c. and on divers other days and times between that day and the day of suing out the original writ of the said J. R. in this behalf, when divine service was performed in the said church, did sit in the said last-mentioned pew without the licence and consent, and against the will of the said J. R. and did then and there obstruct, hinder, and exclude the said J. R. and his family then inhabiting the said last-mentioned messuage or dwelling-house from sitting in and having the use of the said last-mentioned pew, whereby the said J. R. could not have and enjoy the use and benefit of the said last-mentioned pew for himself and family so inhabiting the said messuage or dwelling-house last-mentioned to attend and hear divine service performed in the said church upon the days and at the times aforesaid, but by reason thereof during all the time aforesaid hath been totally deprived of all the use and benefit of the said last-mentioned pew, to wit, at, &c.; whereupon the said J. R. saith that he is injured, and hath sustained damage to the value of one hundred pounds; and therefore he brings his suit, &c.

LINCOLNSHIRE, to wit, Ann Hill, late of, &c. was at- ^{Declaration a-} tached by his majesty's writ of privilege issuing out of the court ^{gainst defend-} here, to answer unto William Pennell, gentleman, one of the ^{ant, for erecting} attornies of his majesty's court of the bench, according to the ^{a gate across a} liberties and privileges of the said court for such attornies, and ^{way which led} other ministers of the said court from time immemorial used and ^{from the plan-} approved of, in a plea of trespass on the case, &c.; and there- ^{tiff's house to} upon the said William in his own proper person complains, that ^{the king's high-} whereas he the said William heretofore, to wit, on, &c. was and ^{way.} from thence hitherto hath been, and still is, seised in his demesne as of fee of and in a certain ancient messuage or dwelling-house, with the appurtenances, situate and being at, &c. and near to a certain close there called the George Inn Yard, during the time aforesaid, in the possession of the said Ann, in which said dwelling-house he the said William, during all the time aforesaid, resided and dwelt, and still doth reside and dwell; and the said William, and all those whose estate he so had, and now hath, of and in the said messuage or dwelling-house, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had and have used, and been accustommed to have, and ought to have had, and still of right ought to have had, and still of right ought to have, a certain way from the said messuage for the said William into, through, and along a certain part of the said close there called the George Inn Yard, unto and into a certain common king's highway there, called the Waring Road, and

so back again from the said highway into, through, and along the said part of the said close there, called the George Inn Yard, unto the said messuage of the said William, to go, return, pass, and repass, by himself and themselves, and his and their servants, on foot and with his and their horses, carts, and carriages, loaden and unloaden, at all times of the year, at his and their free will and pleasure, as belonging and appertaining to the said messuage, with the appurtenances, of the said William; yet the said Ann, well knowing the premises, but contriving and maliciously intending, wrongfully and unjustly, to hurt, injure, and prejudice the said William, and to deprive him of the use, benefit, and advantage of his said way, and to incommode and annoy him in the possession, use, and occupation of his said messuage, with the appurtenances, whilst he the said William was so seised thereof, and whilst he the said William so resided and dwelt in the said messuage or dwelling-house, and was so entitled to such way as aforesaid, on, &c. at, &c. wrongfully and unjustly put up, &c. and wrongfully and unjustly caused and procured to be put up, &c. in and across a certain part of the said way in the said close there, called the George Inn Yard, a certain gate, and then and there wrongfully and unjustly locked, shut, and fastened up the said gate, and then and there, and from thence hitherto wrongfully and unjustly kept and continued, and caused and procured to be kept and continued, and still doth keep and continue the said gate so there wrongfully and unjustly put up, fixed, and placed, and so locked, shut, and fastened as aforesaid, upon and across the said way, and hath thereby, during all that time, wrongfully and unjustly obstructed the said way, so that he the said William could not have and enjoy the same as during all that time he otherwise would, and of right ought to have done, but was thereby hindered and prevented from so doing, and wholly lost the use of his said way, and also was and hath been, for and during all that time, and still is put to great and additional trouble and expence in the conveyance of coals, corn, hay, &c. and other necessary things, to and from his said messuage by another and different way, and forced and obliged to carry the same through his said messuage and dwelling house, whereby the said messuage or dwelling-house was very much dirtied, daubed, and spoiled, and the said William was and is thereby greatly incommoded, annoyed, and disturbed in the possession, use, and occupation of his aforesaid messuage and dwelling-house, to wit, at, &c.: And also whereas the said William heretofore, to wit, on, &c. was, and from thenceforth hitherto hath been, and still is, seised in his demesne as of fee of and in a certain other ancient messuage or dwelling-house, with the appurtenances, situate and being, at, &c. in, &c. and near to a certain other close there, called the George Inn Yard, during the time last aforesaid, in the possession of the said Ann, in which said last-mentioned messuage or dwelling-house, he the said William, during all that time resided and dwelt, and still doth reside and dwell; and the said William, and all those whose estate

2. Court, erecting a gate across.

estate he so had and now hath of and in the said last-mentioned messuage or dwelling-house, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, &c. [as before] a certain way from the said last-mentioned messuage of him the said William, into, through, and (1) *across* a certain part (1) "along" of the said last-mentioned close there, called the George Inn Yard, unto and into a certain common king's highway there, called the Waring Road, and so back again from the said highway into, through, and along the said part of the said last-mentioned close there, called the George Inn Yard, unto the said last-mentioned messuage of the said William to go, return, pass, and repass, &c. &c. at his and their free will and pleasure, as belonging and appertaining to the said last-mentioned messuage, with the appurtenances, of him the said William; yet the said Ann, well knowing the premises last aforesaid, but contriving, &c. whilst he the said William was so seised thereof, *and whilst he the said William so resided and dwelt in the said last-mentioned messuage or dwelling-house,* and was so entitled to the said last-mentioned way as aforesaid, to wit, on, &c. (2) *and from thence hitherto kept and continued,* (2) "wrong- and caused and procured to be kept and continued, and still fully and un- doth keep and continue a certain other gate, before then wrong-justly put up- fully and unjustly put up, fixed, and placed upon and across the said fixed, and plac- ed upon and a- way in the said last-mentioned close, called the George Inn Yard, cross a certain part of the said and then and there shut up, locked, and fastened, so there wrongfully last-mentioned and unjustly fixed up and placed, so there shut up, locked and fasten- way in the said ed as aforesaid, and thereby, during all that time wrongfully and close, called the unjustly blocked up and obstructed the said last-mentioned way, and George Inn hindered and prevented the said William from having and enjoying Yard, a certain the same as during all that time he otherwise would, &c. &c. [finish other gate, and as the first Count]: And also whereas, &c. &c. [finish this Count then and there, same as the second, omitting what is in Italic and inserting in lieu and from thence thereof what is in the margin]: And also whereas the said Wil- hitherto wrong- fully kept and liam heretofore, to wit, on, &c. was, &c. possessed of and in a continued, and certain other messuage, with the appurtenances, situate and being still doth keep at, &c. near to, &c. there called, &c. in the possession of the said the said gate so Ann, and by reason thereof he the said William, during all the there wrongfully time last aforesaid ought to have had, and still of right ought to put up, upon, have a certain way from the said last-mentioned messuage of him and across the said last-mentioned messuage of him the said William, with the appurtenances, into, through, and said last-men- along a certain part of the said last mentioned close there, called, &c. tioned way, and unto and into a certain common king's highway there, called, &c. during that time, and so back again from the said highway into, through, and along to wit, on, &c. the said part of the said last-mentioned close there, called, &c. and on divers other days be- the said last-mentioned messuage of the said William, to go, return, and the suing out of the writ of the said Wil- &c. &c. at his and their free will and pleasure, as belonging and liam against the said Ann, wrongfully and unjustly locked the said gate, and caused and procured the same to be locked, and wrongfully and unjustly caused and procured the said last-mentioned gate to be kept so locked for a long space of time, to wit, for the space of twenty hours on each and every of those days, and thereby on those days, the same being proper and reasonable times for using the said last-mentioned way, wrongfully and unjustly obstructed the said way, and hindered and prevented the said William from having and enjoying the same as,"

appertaining

5th Count, fixing gate in George Innyard.

appertaining to the said last-mentioned messuage of him the said William, with the appurtenances; yet the said Ann, well knowing the premises, but contriving, &c. the said William, and to deprive him of the use and advantage of his said last-mentioned way, and to incommode and annoy him in the possession, use, and occupation of his said last-mentioned messuage, with the appurtenances, whilst he the said William was so possessed thereof as aforesaid, and whilst he was so entitled to such way as aforesaid, to wit, on, &c. wrongfully and unjustly put up, &c. and caused to be put up, fixed, and placed in, upon, and across a certain part of the said last-mentioned way in the said close called the George Inn Yard, and there locked, shut, and fastened a certain other gate, and then and there, and from thence hitherto wrongfully and unjustly kept and continued, and still doth keep and continue the said gate so there wrongfully and unjustly put up, &c. and so locked, shut, and fastened as aforesaid, in, upon, and across the said last-mentioned way, and hath, during all that time, wrongfully and unjustly obstructed the said last mentioned way, so that the said William could not have or enjoy the same as during all that time he otherwise would, and of right ought to have done, but was thereby hindered and prevented from so doing, and wholly lost the use of his said last-mentioned way, to wit, at, &c.: And also whereas the said William heretofore, to wit, on, &c. was, and from thence hitherto hath been, &c. and near to a certain other close then called, &c. in the possession of, &c. and by reason thereof he the said William, during all the time last aforesaid, of right ought, &c. &c. and so back again from the said highway, &c. at his and their free will, &c.; yet the said Ann, well knowing the premises last aforesaid, but contriving, &c. the said William, and to deprive him of the use, benefit, and advantage of his said last-mentioned way, and to incommode and annoy him in the possession, use, and occupation of his said last-mentioned messuage, with the appurtenances, whilst he the said William was so possessed thereof, and whilst he the said William was so entitled to the said last-mentioned way as aforesaid, to wit, on, &c. and on divers other days and times between that day and the day of suing out the original writ of the said William against the said Ann, wrongfully and unjustly kept and continued, and caused to be kept and continued shut up, locked, and fastened a certain other gate before then put up, fixed, and placed upon and across the said last-mentioned way of the said William in the said last-mentioned close called the George Inn Yard, and thereby, in and during those several days and times, and at each and every of those times, the same being then and there reasonable and proper times, and of them being then and there a reasonable and proper time for using the said last-mentioned way, wrongfully and unjustly blocked up and obstructed the said way, so that the said William could not use the same, and then and there hindered and prevented the said William from having and enjoying the same as at and during all those times he otherwise would and of right ought to have done,

to wit, at, &c. : And also whereas the said William heretofore, to 6th Count, in
 wit, on, &c. was, &c. lawfully possessed of and in a certain close stable yard.
 of land there called the Yard, otherwise the Stable Yard, with the
 appurtenances, situate and being at, &c. &c. near, &c. and by
 reason thereof he the said William, during all the time last afore-
 said of right ought to have a certain way from the said close of the
 said William, with the appurtenance, into, through, and along a
 certain part of the said last-mentioned close there called the George
 Inn Yard unto and into a certain common, &c. and so back again
 from, &c. to go, &c. at his and their free, &c. as belonging and
 appertaining to the said close of the said William, with the appur-
 tenances; yet the said Ann, well knowing the premises, but con-
 triving, &c. the said William, and to deprive him of the use,
 benefit, and advantage of his said last-mentioned way, and to in-
 commodate and annoy him in the possession, use, and occupation of
 his said close, with the appurtenances, whilst he the said William
 was so possessed thereof, and was so entitled to such way as afore-
 said, to wit, on, &c. wrongfully and unjustly kept and continued,
 and caused and procured to be kept and continued shut, &c. a cer-
 tain other gate before then put up, &c. in, upon, and across the
 said last-mentioned way of the said William in the said close called
 the George Inn Yard, and thereby, during all that time, wrong-
 fully and unjustly blocked up and obstructed the said last-mentioned
 way of the said William, so that the said William could not dur-
 ing that time use and enjoy the same, and then and there during
 all that time hindered and prevented the said William from having
 and enjoying the same as he otherwise would, and of right ought
 to have done during the said last-mentioned time; whereby he the
 said William, during all that time, lost and was deprived of the
 use, benefit, and advantage of the said last-mentioned way, to wit,
 at, &c. ; whereby he the said William saith he is injured and hath
 sustained damage to the amount of two hundred pounds, and there-
 fore he brings his suit.

THOMAS DAYENPORT,

EDWARDS AND ANOTHER }
 against

CARDIGANSHIRE, to wit.

JENKINS AND ANOTHER.

Thomas Edwards and James Ed-

wards complain of David Jenkins
 and Catherine Jenkins, being, &c.; for that whereas the said
 Thomas and James, on the thirtieth of May 1787, and long be-
 fore, were, and continually from that time hitherto have been, and
 still are lawfully possessed of and in a certain ancient water corn
 mill, with the appurtenances, situate, standing, and being within
 the manor and lordship of Hampeter Pont Stephen, in the said
 county of Cardigan; and the said Thomas and James being so
 possessed of the said mill, with the appurtenances, by reason there-
 of, during all the time aforesaid, have had, and of right ought to
 have, for all the time aforesaid, toll of all *corn, grain, and* malt
 ground in the same mill: And whereas the said David and Cathe-
 rine, on the same day and year aforesaid, and long before, were,

Declaration by
 the possessor of
 an ancient water
 corn mill in the
 manor of A. and
 to which de-
 fendants were
 bound, in con-
 sequence of a
 messuage they
 possessed within
 the manor, a-
 gainst defend-
 ants, for grind-
 ing their grist
 which they used
 and spent with-
 in the manor at
 another mill, per

quod plaintiffs lost the profit he ought to have had from grinding the grist. Several Counts, vary-
 ing the nature of defendants obligation to the mill.

and

and continually from thenceforth hitherto have been, and still are, possessed of and in a certain messuage or dwelling-house, with the appurtenances, situate, standing, and being within the manor or lordship aforesaid, in which said messuage or dwelling-house the said defendants did for all the time aforesaid, inhabit and dwell, and still inhabit and dwell, and by reason thereof, for all the time aforesaid, ought to have ground, and still of right ought to grind at the aforesaid mill all their *corn, grain, and malt* which after the grinding thereof had been or should be used and spent in their said messuage or dwelling-house, and to pay the said Thomas and James for the grinding thereof a reasonable toll; nevertheless the said defendants, well knowing the premises, but designing and maliciously intending unjustly to injure and damnify the said plaintiffs in this behalf, and to hinder and deprive them of the profit and advantages which ought to have accrued to them from and by reason of the grinding of the said *corn, grain, and malt* of the said defendants by them after the grinding thereof within the time aforesaid, used and spent in their said messuage or dwelling-house, to wit, on the thirtieth day of May, 1787, and on divers other days and times between that day and the day of exhibiting the bill of the said plaintiffs, at Lampeter Pont Stephen aforesaid, in the said county, did withdraw their grist from the said mill of the said Thomas and James, and did grind and cause to be ground a large quantity of *corn, grain, and malt*, that is to say, *one thousand quarters of corn, one thousand quarters of grain, and one hundred quarters of malt* by them, after grinding thereof, in their said messuage or dwelling-house within that time aforesaid used and spent, in and at another mill than the said mill of the said plaintiffs, to wit, at L. P. S. aforesaid, in the said county, by reason whereof the said plaintiffs have totally lost the profit and advantage which they ought to have got and obtained from the grinding thereof at their said mill, to wit, at L. P. S. aforesaid, in the said county:

And whereas also, &c. [2d Count same as first, only stating the custom to be to grind malt only, and therefore omitting the words in *Italic*]: And whereas also the said Thomas and James, on the thirtieth of May 1787, and long before were, and continually from thenceforth hitherto have been, and still are lawfully possessed of and in a certain other ancient water corn mill, with the appurtenances, situate, lying, and being within the said manor or lordship of Lampeter Pont Stephen aforesaid, in the said county; and the said plaintiff, being so possessed of the said last-mentioned mill, with the appurtenances, by reason thereof, during all the time last aforesaid, have had, and of right ought to have, for all the time last aforesaid, toll of all corn, grain, and malt ground in the said last-mentioned mill: And whereas also the residents and inhabitants residing and inhabiting in houses within the said manor or lordship of L. P. S. (save and except such inhabitants and residents residing and inhabiting in houses within the said manor as are bound to any other mill with some part of their corn, and save and except poor cottagers, that buy some meal ready ground) have during

2d Count.

3d Count.

during all the time last aforesaid ground, and still of right ought to grind all their corn, grain, and malt, which by them, or any of them, after the grinding thereof, had been and should be used or spent in their said respective houses, at the said last-mentioned mill of the said plaintiffs: And whereas also the said defendants, on the thirtieth day of May 1787, and long before were, and continually from thenceforth hitherto have been, and still are inhabitants and residents within the said manor or lordship and are not, nor during the time last aforesaid were bound to any other mill than the said last-mentioned mill of the said plaintiffs with any part of their corn, and are not, nor during the time last aforesaid were not poor cottagers that bought some meal ready ground, and during all the time last aforesaid have resided and dwelt, and still do reside and dwell in a certain other dwelling-house, with the appurtenances, situate, standing, and being within the manor aforesaid, and by reason thereof, for all the time last aforesaid ought to have ground, and still ought to grind at the said last-mentioned mill of the said plaintiffs all their corn, grain, and malt, which after the grinding thereof by them, or either of them, had been or should be used or spent in their said last-mentioned dwelling-house, and to pay to the said Thomas and James for the grinding thereof a reasonable toll; nevertheless [grievances same as in first Count, and so on to the end]: And whereas also, &c. 4th Count.

[4th Count same as third, with the same difference as between the second and first]: And whereas also the said Thomas and James afterwards, to wit, on the said thirtieth day of May 1787, and long before were, and continually from thenceforth hitherto have been, and still are lawfully possessed of and in a certain ancient water corn mill, with the appurtenances, situate, lying, and being within the manor or lordship of L. P. S. aforesaid, in the said county, and the said plaintiffs being so possessed of the said last-mentioned mill, with the appurtenances, by reason thereof, during all the time last aforesaid, have had, and of right ought to have, for all the time last aforesaid, toll of all corn, grain, and malt ground in the said last-mentioned mill: And whereas also the residents and inhabitants residing and inhabiting in houses within the said manor or lordship of L. P. S. aforesaid, in the said county, during all the time last aforesaid, ought to have ground, and still of right ought to grind all their corn, grain, and malt which by them, or any of them, after the grinding thereof, had been or should be used or spent in their said respective houses, at the said last-mentioned mill of the said plaintiffs: And whereas also the said defendants, on, &c. and long before were, and continually from thenceforth hitherto have been, and still are inhabitants and residents within the said manor or lordship, and during all the time last aforesaid have resided and dwelt, and still do reside and dwell in a certain other dwelling-house, with the appurtenances, situate, standing, and being within the manor or lordship aforesaid, and by reason thereof, and for all the time last aforesaid ought to have ground, and still of right ought to grind in the said last-mentioned mill of the said plaintiffs, all their corn, grain, and malt, which
after

6th Count.

7th Count, against defendants, for buying corn which they had and spent within the manor, ready ground, and which had been ground at another mill; per quod, &c.

after the grinding thereof by them or either of them, had been or should be used or spent in their said last-mentioned dwelling-house, and to pay to the said plaintiffs for the grinding thereof a certain reasonable toll; nevertheless [the gravamen same as in the first Count, and so on to the end]: And whereas, &c. [6th Count same as fifth, with the same difference as between the second and first]: And whereas also the said plaintiffs, on, &c. and long before were, and continually from thence hitherto have been, and still are lawfully possessed of and in a certain other ancient water corn mill, with the appurtenances, situate, lying, and being within the manor or lordship of L. P. S. aforesaid, in the said county; and the said plaintiffs being so possessed of the said last-mentioned mill, with the appurtenances, by reason thereof, during the time last aforesaid, have had, and of right ought to have for all the time last aforesaid, toll of all *corn, grain, and malt*, ground in the said last-mentioned mill; and whereas the said defendants, on, &c. and long before were, and continually from thenceforth hitherto have been, and still are possessed of a certain other messuage or dwelling-house, with the appurtenances, situate, standing, and being within the manor or lordship aforesaid, in which said last-mentioned dwelling-house they the said defendants did for all the time last aforesaid, and still do inhabit and dwell, and by reason thereof, for all the time last aforesaid, ought to have ground, and still of right ought to grind at the said last-mentioned mill all their *corn, grain, and malt* which, after the grinding thereof had been and should be used and spent in their said messuage or dwelling-house, and to pay for the grinding to the said plaintiffs a reasonable toll; nevertheless the said defendants, well knowing the premises last aforesaid, but designing and maliciously intending, unjustly to injure and damnify the said plaintiffs in this behalf, and to hinder and deprive them of the profits and advantage of their said last-mentioned mill, and wrongfully and fraudulently designing and maliciously intending to evade the grinding of the said last-mentioned malt at the said last-mentioned mill of the said plaintiffs, and to evade the paying of the said last-mentioned reasonable toll arising and accruing to the said plaintiffs from the grinding of the said last-mentioned malt at the said last-mentioned mill of the said plaintiffs, on, &c. and on divers other days, &c. at, &c. in, &c. did withdraw other their grist from the said last-mentioned mill of the said plaintiffs, and did not all or during any part of the time last aforesaid grind or cause to be ground at the said mill any malt whatever, but during the time last aforesaid did wrongfully, injuriously, evasively, and deceitfully, in order to evade the grinding of the said last-mentioned malt at the said last-mentioned mill, and the payment of the last-mentioned toll as last aforesaid, buy, and caused to be bought divers large quantities of malt ground, which had been ground elsewhere than at the said last-mentioned mill of the said plaintiffs, and did then and there use and spend the said malt, ground and bought as last aforesaid, within the said last-mentioned messuage of the said plaintiffs, and which the said defendants, at the time of using and spending thereof, knew to have been

been ground elsewhere than at the said last-mentioned mill of the said plaintiffs, by reason whereof the said plaintiffs have totally lost the profit and advantage which they ought to have got and obtained from the grinding thereof at their said last-mentioned mill, and the toll and multure arising therefrom, to wit, at, &c. : And ^{8th Count,} whereas, &c. [this Count same as the seventh, leaving out the words in *Italic*]: And whereas also the said plaintiffs, on, &c. and ^{9th Count,} long before were, and continually from thenceforth hitherto have been, and still are lawfully possessed of and in a certain other ancient water corn mill, with the appurtenances, situate, lying, and being within the manor or lordship of L. P. S. aforesaid, in the said county; and the said plaintiffs being so possessed of the said last-mentioned mill, with the appurtenances, by reason thereof, during the time last aforesaid, have had, and of right ought to have, for all the time last aforesaid, toll of all corn, grain, and malt ground in the said last-mentioned mill: And whereas the residents and inhabitants residing and inhabiting in houses within the said manor or lordship of L. P. S. (save and except such inhabitants and residents residing and inhabiting in such houses within the said manor as are bound to any other mill with some part of their corn, and save and except poor cottagers that buy some meal ready ground) have during all the time last aforesaid, ground, and still of right ought to grind all their corn, grain, and malt, which by them or any of them had been or should be used and spent, after the grinding thereof, in their said respective houses at the said last-mentioned mill of the said plaintiffs, to wit, at, &c. : And whereas also the said defendants, on, &c. and long before were, and continually from thenceforth hitherto have been, and still are residents and inhabitants within the said manor or lordship, and are not, nor during the time last aforesaid, were bound to any other mill than the said last-mentioned mill of the said plaintiffs with any part of their corn, and are not, nor during the time last aforesaid were not poor cottagers that bought some meal ready ground, and during all the time last aforesaid have resided and dwelt, and still do reside and dwell in a certain other dwelling-house, with the appurtenances, standing and being within the manor and lordship aforesaid, and by reason thereof, and during all the time last aforesaid ought to have ground, and still of right ought to grind at the said last-mentioned mill of the said plaintiffs, all their corn, grain, and malt which, after the grinding thereof, had been or should be by them or either of them used or spent in their said messuage or dwelling-house, and to pay to the said plaintiffs for the grinding thereof a reasonable toll; nevertheless, &c. [gravamen same as in the seventh Count, and so on to the end]; And whereas, &c. [this Count same as the last, with the difference ^{10th Count,} of *malt* only, instead of "corn, grain, and malt."] Damages, &c. Pledges, &c. *Drawn by MR. J. GRAHAM.*

It will be necessary for the plaintiffs in this action to prove their possession of the mill in question, which may be done

by any witness who knows the fact. The plaintiffs must then prove the defendants occupation of the messuage in right

right of which they are bound to grind their corn at the plaintiff's mill; this likewise may be done by a witness who knows the fact, and that they the defendants have occupied the messuage during the time stated in the declaration. The custom must then be proved, which must be, by producing the court rolls of the manor, upon which I presume the presentments have been regularly entered. I think there will be no occasion to give any other proof of the presentments, as they are evidence of themselves, without further proof, but in corroboration of this evidence, I would advise the plaintiffs to be prepared with the parol testimony of witnesses in proof of the custom. Any of the oldest inhabitants of the place will be good witnesses to produce in support of this. Some evidence should be given that the defendants are not poor cottagers or owe suit to another mill, but the slightest

proof will do to put the defendants to prove the contrary. The plaintiffs must then be prepared to prove the gravamen in the declaration, viz. "that the defendants bought malt ready ground in order to evade the custom;" this may be done by proving the buying the malt, and slight evidence that such malt was not ground at the plaintiff's mill, and that such malt was afterwards used and spent in the defendant's house. It would not be amiss to prove, that the defendants ground no malt during the time mentioned in the declaration at the plaintiff's mill, which may be done by the testimony of plaintiff's servants. I do not see that any other proof will be necessary.

I. G.

This cause was tried in Lent Assize 1788, when plaintiff was nonsuited for not proving the custom as laid in the declaration.

Text by a copyholder for disturbance of common, by surcharging common with cattle.

S. to wit. Plaintiff complains of defendant being, &c. for that whereas the manor of R. in the said county S. now is, and from time whereof the memory of man is not to the contrary, hath been an ancient manor, and during all the time aforesaid there have been and still are divers ancient customary tenements within and respectively parcels of the said manor, demised and demiseable by copies of the court rolls of the said manor by the lord or lady of the said manor by his or her steward of the courts thereof for the time being, in fee simple or otherwise at the will of such lord or lady, according to the custom of the said manor; and the eighteen acres of land, hereinafter mentioned to have been granted to the said plaintiff with the appurtenances, during all the time aforesaid, have been and still are within and parcel of the said manor and one of the customary tenements aforesaid; and whereas there now is, and from time whereof the memory of man is not to the contrary, hath been within the said manor, a certain ancient and laudable custom there used and approved of, that is to say, that all and every the customary tenants of such customary tenements, even the said manor for the time being respectively, from time whereof the memory of man is not to the contrary, until the committing of the grievances hereinafter next mentioned, have had and of right ought to have had, and still of right ought to have for themselves, their farmers, and tenants, occupiers of such respective tenements for the time being, common of pasture in, upon, and throughout a certain green called K. green, lying within the said manor of R. and within the parish of K. in the said county of S. for all their commonable cattle, levant and couchant, on their said customary tenements respectively every year, at all times of the year at their free will and pleasure

as belonging and appertaining to their said customary tenements respectively; and whereas before the committing of the grievances herein after next mentioned, to wit, on the day of A. D. 17 ; our sovereign lady the now queen, then being lady of the said manor at the court baron of the said queen, then holden at the said parish of K. in and for the said manor before A. B. gentleman, then her steward of the courts thereof, by copy of the court roll of the said manor granted to the said plaintiff, eighteen acres of land, lying at the said parish of K. with the appurtenances, to hold the same to the said plaintiff, his heirs and assigns for ever of the lord or lady of the said manor, by copy of the court rolls at the will of the lord or lady and according to the custom of the said manor; by virtue whereof the said plaintiff, afterwards and before the committing of the said grievance, to wit, on the day and year aforesaid, entered into the said eighteen acres of land with the appurtenances, and became and was seized thereof in his demesne as of fee at the will of the lord and lady according to the custom of the said manor; and the said plaintiff before and at the times of committing the said grievances was in the actual possession and occupation of the said eighteen acres of land with the appurtenances, and by reason of the several premises ought to have had such common of pasture as aforesaid, for all his commonable cattle, levant and couchant, thereon; yet the said defendant well knowing the premises (1) but contriving and maliciously intending to hurt, injure, and prejudice the said plaintiff in this behalf, and to deprive him of a great part of the benefit and advantage of his said common of pasture whilst the said plaintiff was so (2) *possessed* of the said *eighteen acres of* (3) land with the appurtenances as aforesaid, to wit, on the (4) first day of May, in the year of our Lord 1788 (5), and on divers other days and times between that day and the commencement of this suit at the parish aforesaid, wrongfully, unlawfully, and injuriously put and turned, and caused to be put and turned into and upon the said green, divers cattle, to wit, ten cows, ten geldings, ten mares, and twenty sheep; and on those several days and times, kept, fed, and depastured them there; whereby the said plaintiff on those several days and times was greatly hindered and deprived of his said (6) common of pasture on the said green, and could not have and enjoy the same in so large, ample, and beneficial a manner as he ought to have done, but lost a great part of the profit, benefit, and advantage thereof: And whereas also the said plaintiff, on the first of January in the year aforesaid, was and continually from thence hitherto hath been and still is lawfully possessed of and in divers, to wit, eighteen other acres of land with the appurtenances, lying and being in the said parish of K. in the said county of S. and by reason thereof during all the time aforesaid, until the committing of the grievances nereinafterwards mentioned, hath had and hath used, and been accustomed to have, and of right ought to have had, and still of right ought to have common of pasture in, upon, and throughout the said green called K. green for all his

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commonable cattle, levant and couchant, on the said last mentioned land with the appurtenances, every year at all times of the year, at his free will and pleasure, as belonging and appertaining to the same; yet, &c. [the remainder of the Second Count was like the gravamen to the first, except the alterations by the words in *Italic* and those printed in the margin.] Damage, one hundred pound, &c. S. MARRYATT.

The first Count which claims a right of common in respect of a copyhold *seign*, is inserted only because I understand the action to be brought at the instance of the copyholders of this manor at large, for the purpose of asserting what they conceive to be their general right; and I therefore wished to have it ascertained (as it would be in case of a general verdict for the plaintiff,) on the record of the judgment. *Possession* is

however sufficient against a wrong doer, and consequently for the mere purpose of this action is all the title that need have been shewn in the declaration; but it is absolutely necessary to state correctly, in respect of what premises the plaintiff has a right of common upon the green, for what sorts of cattle, in what numbers or proportions, and at what periods of the year it is to be exercised. S. MARRYATT.

Trinity Term, 6. Geo. III.

Declaration against defendant, for disturbing the plaintiff in his right of common, by inclosing a part of the common.

WILSON } CUMBERLAND, to wit. J. J. late, &c.
against } was attached to answer J. W. of a plea of trespass
JEFFERSON. } on the case, &c.; and whereupon the said plaintiff,
by A. B. his attorney, complains, that whereas the said plaintiff, on the first of January 1765, and long before was, and continually from thenceforth hitherto hath been, and still is lawfully possessed of and in a certain messuage, and divers, to wit, one hundred acres of land, with the appurtenances, situate, lying, and being at the parish of Wigton, in the county aforesaid, and by reason of his possession thereof of right had, and during all that time of right ought to have had, and yet of right ought to have common of pasture for all his commonable cattle levant and couchant upon his said messuage and land, with the appurtenances, in, upon, and throughout a certain large waste or common called High Moor, otherwise Southend Green, in the parish of Wigton aforesaid, every year and at all times of the year, at his will and pleasure, to the said messuage and land, with the appurtenances; nevertheless the said J. well knowing the premises, but maliciously and wrongfully intending to injure the said J. in the use and enjoyment of his common of pasture aforesaid, whilst he the said J. was possessed of the said messuage and land, with the appurtenances, as aforesaid, and interested to the said common of pasture as aforesaid, that is to say, on the first of February 1766, unlawfully and injuriously inclosed, separated, and divided, and caused to be inclosed, separated, and divided with walls, ditches, and fences, parcel, to wit, four acres of the said waste or common called High Moor, otherwise Southend Green, from the residue of the said waste or common, and unlawfully continued, and caused to be continued the same so inclosed, separated, and divided, for a long space of time, to wit, from thence until the day of issuing forth of

of the original writ of the said J. whereby the said J. during all that time, could not have and enjoy the said common of pasture, in, upon, and throughout the said waste or common called High Moor, otherwise Southend Green, in so large, ample, and beneficial a manner, as of right he ought to have had and enjoyed the same, but during that time was hindered and deprived of very great part of the benefit and advantage thereof, to wit, at the parish aforesaid: And whereas also the said ad Count, on the said first of January 1765 aforesaid, and long before, was, and continually from thenceforth hitherto hath been, and still is lawfully possessed of and in a *certain other messuage*, with the appurtenances, situate and being at the parish of Wigton aforesaid, and by reason of his possession thereof of right had, and during all that time of right ought to have had, and of right ought to have common of pasture for all his commonable cattle levant and couchant upon his last-mentioned messuage, with his appurtenances, upon and throughout a certain other large waste or common called High Moor, otherwise Southend Green, in the parish of Wigton aforesaid, every year at all times of the year, at his will and pleasure as to his last-mentioned messuage, with the appurtenances belonging and appertaining; nevertheless the said J. well knowing the last-mentioned premises, but maliciously and wrongfully intending to injure the said J. in the use and enjoyment of his last-mentioned common of pasture, whilst he the said J. was so possessed of his said last-mentioned common of pasture as aforesaid, that is to say, on the said first of February 1766, unlawfully and injuriously inclosed, separated, and divided, and caused to be inclosed, separated, and divided with walls, ditches, and fences, parcel, to wit, four acres of the said last-mentioned waste or common called High Moor, otherwise Southend Green, from the residue of the same waste or common, and unlawfully continued, and caused to be continued the same so inclosed, separated, and divided for a long space of time, to wit, from thence until the day of the issuing forth of the original writ of the said J. whereby the said J. during all that time could not have and enjoy his said last-mentioned common of pasture in, upon, and throughout the said last-mentioned waste or common called High Moor, otherwise Southend Green, in so large, ample, and beneficial a manner as of right he ought to have had and enjoyed the same, but during that time was hindered and deprived of very great part of the profit, benefit, and advantage thereof, to wit, at, &c.: And whereas also the said 3d Count, for disturbing plaintiff in his right of common, by building a stable upon the same. plaintiff, on the sixth of January 1765 aforesaid, and long before, was, and continually from thenceforth hitherto hath been, and still is lawfully possessed of and in a certain other messuage, and divers, to wit, one hundred acres of other land, with the appurtenances, situate, lying, and being at the parish of Wigton aforesaid, and by reason of his possession thereof of right had, and during all that time of right ought to have had, and yet of right ought to have common of pasture for all his commonable cattle levant and couchant upon the last-mentioned messuage and land, with the appurtenances, in, upon, and throughout a certain other large waste or common

4th Count:

common called High Moor, otherwise Southend Green, in the parish of Wigton aforesaid, every year, at all times of the year at his will and pleasure as to his last-mentioned messuage and lands, with the appurtenances belonging and appertaining; nevertheless the said J. well knowing the said last-mentioned premises, but maliciously and wrongfully intending to injure the said J. in the use and enjoyment of his said last-mentioned common of pasture whilst he the said J. was so possessed of his last-mentioned messuage and lands, with the appurtenances as aforesaid, and entitled to the said last-mentioned common of pasture as aforesaid, that is to say, on the first of February 1766 aforesaid, unlawfully and injuriously *built and erected, and caused to be built and erected in and upon the said last-mentioned waste or common, a certain stable or barn, and unlawfully* continued, and caused to be continued the same so built and erected there, for a long space of time, to wit, from thence until the day of issuing forth of the original writ of the said J. whereby the said J. during all that time could not have and enjoy his last-mentioned common of pasture, in, upon, and throughout the last-mentioned waste or common, in so large, ample, and beneficial a manner as of right he ought to have had and enjoyed the same, but during that time was hindered and deprived of great part of the profit, benefit, and advantage thereof, to wit, at the parish of W. aforesaid: And whereas also the said J. on the first of January 1765 aforesaid, and long before, was, and continually from thenceforth hitherto hath been, and still is lawfully possessed of and in a *certain other messuage*, with the appurtenances, situate, lying, and being at the parish of Wigton aforesaid, and by reason of his possession thereof of right had, and during all that time of right ought to have had common of turbary in, upon, and throughout a certain large waste or common called High Moor, otherwise Southend Green, to dig and take peat and turf in, upon, and throughout the said waste or common for his necessary fuel, to be burnt and consumed in the said messuage every year at all times of the year, as occasion required, as to the said messuage belonging and appertaining; nevertheless the said J. well knowing the said last-mentioned premises, but maliciously and wrongfully intending to injure the said Isaac in the use and enjoyment of his said common of turbary, whilst he the said J. was so possessed of his said last-mentioned messuage, with the appurtenances as aforesaid, and entitled to the said common of turbary as aforesaid, that is to say, on the first of February 1766 aforesaid, unlawfully and injuriously inclosed, separated, and divided, and caused to be inclosed, separated, and divided with walls, ditches, and fences, parcel, to wit, four acres of the said last mentioned waste or common called High Moor, otherwise Southend Green, from the residue of the same waste or common, and unlawfully continued, and caused to be continued the same so inclosed, separated, and divided for a long space of time, to wit, from thence until the day of issuing forth of the original writ of the said J. whereby the said J. during all that time could not have and enjoy the said common of turbary in, upon, and throughout

Out the said last-mentioned waste or common called High Moor, otherwife Southend Green, in so large, ample, and beneficial a manner as of right he ought to have had and enjoyed the same, but during that time was hindered and deprived of very great part of the profit, benefit, and advantage thereof, to wit, at the parish aforesaid: And whereas also the said Isaac, on the first of 5th Count. January 1765 aforesaid, and long before, was, and continually from thenceforth hitherto hath been, and still is lawfully possessed of and in a certain other messuage, and divers, to wit, one hundred other acres of land, with the appurtenances, situate, lying, and being at the parish of W. aforesaid, and by reason of his possession thereof of right had, and during all the time aforesaid of right ought to have had, and still of right ought to have common of pasture for all his commonable cattle levant and couchant upon his messuage and lands, with the appurtenances, in, upon, and throughout a certain other waste or common called Common, in the parish of , in the county aforesaid, in every year, at all times of the year at his will and pleasure as to his last-mentioned messuage and lands, with the appurtenances belonging and appertaining; nevertheless the said Joseph, well knowing the premises, but wrongfully contriving and intending to deprive the said J. of the benefit and enjoyment of a ninth part of his said last mentioned common of pasture on the said first of February 1766 aforesaid, for a long space of time, that is to say, continually from thenceforth until the day of the issuing forth of the original writ of the said J. injuriously upheld and continued in and upon the above-mentioned part of the said waste or common called Common, certain walls, ditches, and fences which had before that time been erected and fixed there as aforesaid, during all that time did wrongfully keep and continue the same part of the said last-mentioned waste or common inclosed and separated from the said residue thereof, whereby the said Isaac could not, during the time last aforesaid, have and enjoy his last-mentioned common of pasture in so ample and beneficial a manner as during that time he ought of right to have enjoyed the same, but during all that time was wrongfully injured and deprived of a very great part of the benefit thereof, to wit, at the parish of W. aforesaid; wherefore, &c.

A. CHAMBRE.

TORTS TO CORPOREAL RIGHTS.

Trinity Term, 24. Geo. III.

WATERS) **LINCOLNSHIRE**, to wit. Simon Waters com-Declaration for
against } plains against Joseph Crafts being, &c. for that where- washing the
CRAFTS. } as the said Simon on first of January 1785, and long skins of divers
before was, and continually from thence hitherto hath been, and beasts into
liquors had been infused in a stream at which plaintiff in right of his messuage was entitled to have which noxious
fresh water for the use of his house, and at which he had the right of watering his cattle, being on
the premises.

M m 3

still

still is lawfully possessed of and in a certain messuage or drug house and brew house, yard, stable, and other premises with the appurtenances thereto belonging, situate and being at Oldpond, in the said county of L. and during all the time aforesaid, hath with his family inhabited and dwelt and yet doth inhabit and dwell therein; and whereas during all the time aforesaid, until the committing of the grievances hereinafter next mentioned, a certain river, stream, or water course hath run and flowed, and during all the time aforesaid hath been used and accustomed to run and flow, and of right ought to have run and flowed, and still of right ought to run and flow from a certain place called , a little above the said messuage or dwelling house and premises of the said Simon, down and near unto the said messuage or dwelling house and premises of the said S. in the backside thereof, and by and along the said brewhouse and yard of the said Simon and so downward; and whereas the said Simon during all that time was *not only* entitled to, and of right ought to have had, and used to have from the said river, stream, or water course for supplying the said Simon and his family residing in the said dwelling house with water for brewing, and for his and their other necessary uses and occasions in the said dwelling house of the said Simon, *but was also entitled to, and of right ought to have had the use and benefit of the said river, stream, or water course, and to have had and taken water therefrom for the watering of cattle of the said Simon, being in and upon his aforesaid premises with the appurtenances;* yet the said Joseph well knowing the premises, but contriving and maliciously intending, wrongfully and unjustly to hurt, injure, and aggrieve the said Simon in this behalf and to deprive him of the use, benefit, and advantage of the water of the said river, stream, or water course for the purpose aforesaid whilst he the said Simon was so possessed of the said dwelling house and other premises, with the appurtenances, as aforesaid, and whilst the said Simon and his family so inhabited and dwelt therein, to wit, on the first of January 1785, and on divers other days and times between that day and the day of exhibiting the bill of the said Simon, at, &c. wrongfully and injuriously dipped, washed, cleanted, soaked, put, laid, and placed, and caused and procured to be dipped, washed, cleansed, soaked, put, laid, and placed in the said river, stream, or water course, a little above the said dwelling house and premises of the said Simon, divers skins which had been infused with noxious and unwholesome washes, liquors, drugs, ointments, and other hurtful and pernicious preparations, matters, and things, and wrongfully and injuriously kept and continued, and caused to be kept and continued the said skins from time to time for a long time together during the said time in the said river, stream, or water course, whereby and by reason whereof the water of the said river, stream, or water course so running and flowing down and near unto the said messuage, dwelling house, and premises of the said Simon on the backside thereof, and by and along the said brewhouse and yard of the said Simon from time to time on those several days and times during the said time, and before the exhibition

exhibiting of the bill of the said Simon, was rendered and became so foul, dirty, corrupt, spoiled, unwholesome, unsavory, nasty; and unfit for use, that the said Simon would not on those days and times during the said time, have or use the same in so wholesome, commodious, and beneficial a manner as he was used and accustomed to have, take, and use the same, and of right during all the said time ought to have had, taken, and used the same, but was wholly deprived of all use, benefit, and advantage thereof, and could not use the same for brewing or for other necessary uses and occasions of himself and his family so residing in his said dwelling house, *and by reason of the said water of the said river, stream, or water course being so rendered foul, dirty, corrupt, spoiled, fetid, unwholesome, unsavory, and nasty, the cattle of the said Simon being in and upon his said premises upon those several days and times during the said time, refused to drink, and declined drinking the water out of the said river, stream, or water course as before they were used and accustomed to do;* and the said Simon was by reason of the said premises, during the said time put to great inconvenience and trouble for want of pure, wholesome, and natural water out of the said river, stream, and rivulet which he of right ought to have had and taken, and was put to great expence in and about the supplying of himself and his family with pure and wholesome water, to wit, at, &c. [Second count same as the first, omitting the words in Italic.] Damage, two hundred pounds.

Drawn by MR. CROMPTON.

SURRY, to wit, James Henckell complains of Richard Declaration at Shepley, being in the custody of the marshal of the marshalsea of our lord the now king before the king himself of a plea of trespass on the case; for that whereas the said James Henckell heretofore, to wit, on the first day of September, in the year of our Lord 1777, was and from thence hitherto hath been, and still is lawfully possessed of and in a certain ancient water mill, situate over and upon a certain river or stream of water commonly called the river Wandle, to wit, at the parish of Wandsworth, in the county of Surry; and whereas during all the time aforesaid the water of the said river Wandle of right ought to have run and flowed, and still of right ought to run and flow from the said mill of the said James Henckell through divers lands in the parish aforesaid, unto and into the river Thames without being penned back upon, and obstructing the mill of the said James Henckell or the wheels thereof or any or either of them, to wit, at the parish aforesaid; and whereas the said James Henckell by reason of his said possession of his said mill during all the time aforesaid, of right ought to have had, and still of right ought to have the free current, course, use, and benefit of the said water running and flowing, and the same ought to run and flow down unto his said mill and the free course and current of the said water, and the same ought to run and flow through and from his said mill down unto and into the said river Thames for the working of his aforesaid mill, without

suit of a miller against the occupier of another mill lower down the stream, for obstructing and penning back the water in several different ways, whereby it was turned back upon plaintiff's mill, and prevented his working it.

the same being penned back upon his mill or the wheels thereof, or any or either of them, to wit, at the parish aforesaid; and whereas the said Richard Shepley, before and during all the time aforesaid, was and still is possessed of and in a certain other mill situate over and upon the said river Wandle, that is to say, below the said mill of the said James Henckell and between the same and the river Thames, to wit, at the parish aforesaid; and whereas the water of the said river from time to time, during all the time aforesaid, running and flowing from the said mill of the said James Henckell in and along the channel thereof towards the river Thames aforesaid, when and so often as the same hath arrived at the said mill of the said Richard Shepley, to wit, at the head thereof, and hath arisen and been at a certain height, to wit, the height of four feet from the bed of the said river Wandle, hath until the obstruction and stoppage thereof, hereafter next mentioned, been used and accustomed to run and flow, and for and during all the time aforesaid of right ought to have run and flowed, and still of right ought to run and flow from and out of the said river Wandle over a tumbling bay, above and belonging unto the said mill of the said Richard Shepley, but below the mill of the said James Henckell, to wit, at the parish aforesaid, into a certain back channel or water course there leading from the said tumbling bay into the said river Wandle before the said mill of the said Richard Shepley, and from thence into the said river Thames, so that the water of the said river Wandle might not be penned back upon the mill of the said James Henckell, and hinder and obstruct the working thereof, to wit, at the parish aforesaid; yet the said Richard Shepley, well knowing the premises, but contriving and wrongfully and injuriously intending to injure the said James Henckell and to deprive him of the benefit and advantage of working his said mill, and of the profit that might otherwise arise and accrue therefrom, heretofore, to wit, on the first day of September, in the year of Our Lord 1777, and from thence hitherto hath wrongfully and unjustly kept and continued, and caused to be kept and continued the tumbling bay belonging to his said mill much higher, to wit, ten inches higher than the same ought to have been raised or erected (the same having been before then wrongfully and unjustly so raised and erected); whereby the water on the day and year aforesaid and on divers other days and times, between that day and the day of exhibiting this bill running and flowing from the said mill of the said James Henckell down unto the aforesaid mill of the said James Henckell down unto the aforesaid mill of the said Richard Shepley after arriving at the aforesaid mill of the said Richard Shepley, to wit, at the head thereof, and after arising and being at the aforesaid height, to wit, the height of four feet aforesaid, arose there to a much greater height, to wit, ten inches higher from the bed of the said river Wandle (the same being ten inches higher than it ought to have arisen on those several days and times), by means of the said tumbling bay of the said Richard Shepley, so being higher than it ought to have been, and the said water so being on the several days and times aforesaid higher than

than it ought to have been, continued higher than it ought to have been for a long time, to wit, for the space of ten hours on and at each of those several days and times, and was by the means aforesaid obstructed, stopped, hindered, and prevented from running and flowing over the tumbling bay belonging to the mill of the said Richard Shepley as soon as and in manner it ought to have done, and thereby became and was penned back upon the mill of the said James Henckell, to wit, upon the wheels thereof, that is to say, for and during the respective times aforesaid; whereby the said mill was for and during the respective time aforesaid hindered and prevented from working; and the said James Henckell thereby lost and was deprived of the profit, benefit, and advantage that would otherwise have arisen and accrued unto him from the working of the said mill during the respective times aforesaid, to wit, at the parish aforesaid: And whereas the said James Henckell afterwards, to wit, on the said first day of September 1777 aforesaid, was, and from thence hitherto hath been, and still is possessed of and in a certain other ancient water mill, situate over and upon the said river or stream of water, commonly called the river Wandle, to wit, at the parish aforesaid; and whereas during all the time aforesaid, the water of the said river Wandle of right ought to have run and flowed, and still of right ought to run and flow from the said last mentioned mill of the said James Henckell through divers lands in the parish aforesaid, unto and into the river Thames without being penned back upon and obstructing the said mill of the said James Henckell, or the wheels thereof, or any or either of them, to wit, at the parish aforesaid; and whereas the said James Henckell by reason of his said possession of his said mill during all the time aforesaid, of right ought to have had, and still ought to have the free current course, use, and benefit of the said water running and flowing, and the same ought to run and flow down unto his said mill, and the free course and current of the said water, and the same ought to run and flow through and from his said mill down unto and into the aforesaid river Thames for the working of his said mill,† without being penned back upon his said mill or the wheels thereof, or any or either of them, to wit, at the parish aforesaid; and whereas the said Richard Shepley before and during all the time aforesaid, was and still is possessed of and in a certain other mill, situate over and upon the said river Wandle, that is to say, below the said mill of the said James Henckell and between the same and the river Thames, to wit, at the parish aforesaid; and whereas the water of the aforesaid river Wandle from time to time during all the time aforesaid, running and flowing from the said mill of the said James Henckell down towards the river Thames aforesaid, when and so often as the same hath arrived at the said mill of the said Richard Shepley, to wit, at the head thereof, and hath arisen and been at a certain height, to wit, the height of four feet from the bed of the said river Wandle, hath until the obstruction and stoppage thereof, hereafter next mentioned, been used and accustomed

2d Count, keeping tumbling bay narrower.

tomed to run and flow, and for and during all the time aforesaid of right ought to have run and flowed, and still of right ought to run and flow from and out of the said river Wandle over a tumbling bay above and belonging unto the said mill of the said Richard Shepley but below the said mill of the said James Henckell, to wit, at the parish aforesaid, into a certain back channel or water course, there leading from the said tumbling bay into the said river Wandle below the said mill of the said Richard Shepley, and from thence into the said river Thames, so that the water of the said river Wandle might not be penned back upon the said mill of the said James Henckell, and hinder and obstruct the working thereof, to wit, at the parish aforesaid; yet the said Richard Shepley, well knowing the premises, but contriving and wrongfully and injuriously intending to injure the said James Henckell, and to deprive him of the benefit and advantage of working said mill, and of the profit that might otherwise arise or accrue therefrom, heretofore, to wit, on the first day of September, in the year of Our Lord 1777 aforesaid, and from thence hitherto *hath wrongfully and unjustly kept and continued, and caused to be kept and continued the tumbling bay belonging to his said mill much narrower, to wit, ten inches narrower than the same ought to have been erected* (the same having been before then wrongfully and unjustly so raised and erected); whereby the water, on the day and year last aforesaid, and on divers other days and times between that day and the day of exhibiting this bill, running and flowing from the said mill of the said James Henckell down unto the said mill of the said Richard Shepley, after arriving at the aforesaid mill of the said Richard Shepley, to wit, at the head thereof, and after arising and being at the aforesaid height, to wit, the height of four feet aforesaid, rose there to a much greater height, to wit, ten inches from the bed of the said river Wandle, the same being ten inches higher than it ought to have been on those several days and times, by means of the said tumbling bay of the said Richard Shepley so being narrower than it ought to have been, and the said water so being on the several days and times aforesaid continued higher than it ought to have been for a long space of time, to wit, for the space of ten hours on and at each of those several days and times, and was, by the means aforesaid, obstructed, stopped, hindered, and prevented from running and flowing over the tumbling bay belonging to the mill of the said Richard Shepley, so soon as and in the manner it ought to have done, and thereby became and was penned back upon the mill of the said James Henckell, to wit, upon the wheels thereof, that is to say, for and during the respective times aforesaid, whereby the said mill was, for and during the respective times aforesaid, hindered and prevented from working, and the said James Henckell thereby lost and was deprived of the profit, benefit, and advantage that would otherwise have arisen and accrued unto him from the working of the said mill during the respective times aforesaid, to wit, at the parish aforesaid: And whereas, &c. [as in the second Count to this mark †, without being penned back upon and obstructing *his said mill*, to wit, at the

†d Count, keep-
 ing mill below
 plaintiff's mill.

the parish aforesaid; yet the said Richard Shepley well knowing, &c. but contriving, &c. hath wrongfully and unjustly kept and continued, and caused to be kept and continued a certain mill, and divers, to wit, three wheels before then wrongfully and unjustly erected across and upon the said river Wandle, below the mill of the said James, and between the same and the said river Thames, to wit, at the parish aforesaid, whereby the water, on the day and year last aforesaid, and on divers other days and times between that day and the day of exhibiting this bill, running and flowing from the said mill of the said James Henckell down towards the river Thames unto the said last mentioned mill of the said Richard Shepley, was, by the means of the said mill and wheels of the said Robert S. for a long time, to wit, for the space of ten hours, at and on each and every of those days and times, obstructed, stopped, hindered, and prevented from running and flowing down unto and into the river Thames aforesaid, and at and on each of those days and times thereby became and was forced back upon the mill of the said James Henckell, to wit, upon the wheels thereof, whereby, &c. [as in the former Counts]: And whereas, &c. [exactly the same as the third Count to the gravamen, with charges] that the defendant hath wrongfully and injuriously kept and continued, and caused to be kept and continued divers, to wit, three large wheels in a mill (the said wheels being before then wrongfully and unjustly so erected in the said mill), and the said mill being erected across and upon the said river Wandle, below the said mill of the said James, and between the same and the said river Thames, to wit, at the parish aforesaid, whereby the water, on the day and year last aforesaid, and on divers other days and times between that day and the day of exhibiting this bill, running and flowing from the said mill of the said James Henckell down towards the river Thames unto the said last-mentioned mill of the said Richard Shepley, by the means of the said wheels in the said mill of the said Richard Shepley, for a long time, to wit, for the space of ten hours, &c. [as in the 3d Count to the end]: And whereas, &c. [as in the second Count to this mark †, *without being penned back upon and obstructing the same*, to wit, at the parish aforesaid: And whereas the said Richard Shepley, before and during all the time aforesaid, was and still is possessed of a certain other mill, situate over and upon the said river Wandle, that is to say, below the said last-mentioned mill of the said James Henckell, and between the same and the said river Thames, to wit, at the parish aforesaid: And whereas the water of the said river Wandle, from time to time during all the time aforesaid, running and flowing from the said mill of the said James Henckell towards the river Thames aforesaid, ought to have run and flowed down unto and into the said river Thames without being obstructed and penned back by the said Richard Shepley, or any wheel or other part thereof, upon the mill or wheels of the said mill of the said James Henckell, or any or either of them, so as to prevent or in any manner hinder the said James Henckell in the working of his said mill, to wit, at the parish aforesaid; yet the said Richard Shepley,

4th Count, of
recting wheels,

5th Count,
keeping a cer-
tain wheel of
certain admea-
surement.

6th Count.

ley, well knowing, &c. but contriving, &c. hath wrongfully and unjustly kept and continued a certain wheel, to wit, a wheel of large diameter and width, to wit, of the diameter of twenty-five foot, and of the width of five foot, before then wrongfully and unjustly erected in the last-mentioned mill of the said Richard Shepley over and upon the said river Wandle, whereby the water on the day and year last aforesaid, and on divers other days and times between that day and the day of exhibiting this bill, was for a long time, to wit, for the space of ten hours on and at the several days and times by the means of the said wheel in the mill of the said Richard Shepley, obstructed, stopped, hindered, and prevented from and flowing down unto and into the said river Thames, and thereby became and was forced, and penned back upon the said last-mentioned mill of the said James Henckell, to wit, on one of the wheels thereof, that is to say, on the largest and principal wheel thereof, whereby the said last-mentioned mill was, for and during the respective times aforesaid, hindered and prevented from working in so large and ample a manner as he otherwise would have done, and the said James Henckell thereby lost and was deprived of the profit, benefit, and advantage that would otherwise have arisen and accrued unto him from the working of his said mill during the respective times aforesaid, to wit, at the parish aforesaid: And whereas, &c. [like the fifth Count, omitting what is in *Italic* to this mark §], without being obstructed and penned back by the mill of the said Richard Shepley, or the apron thereof upon the mill of the said James Henckell, or the wheels thereof, or any or either of them, so as in any manner to obstruct the said James Henckell in the working of his said mill in any manner whatsoever, to wit, at the parish aforesaid; yet the said Richard Shepley, well knowing the premises, but contriving, &c. hath wrongfully and injuriously kept and continued, and caused to be kept and continued an apron in the said river Wandle, *above* and adjoining to the said mill of the said Richard Shepley, of a great height, length, and width, to wit, of the height of three foot and six inches, of the length of thirty feet, and of the width of twenty-five feet, being much higher, longer, and wider than the same ought of right to be, to wit, two feet higher, ten feet longer, and five feet wider than the same ought to be, the said apron having been before wrongfully and unjustly raised, erected, and placed in and across the said river Wandle, to wit, upon and in the bed thereof, that is to say, at the parish aforesaid, whereby the water, on the day and year aforesaid, and on divers other days and times between that day and the day of exhibiting this bill, running and flowing from the said last-mentioned mill of the said James Henckell down to the said mill of the said Richard Shepley towards the said river Thames, arose to a much greater height, to wit, ten inches higher from the bed of the said river Wandle, the same water being ten inches higher than it ought to have arisen on those several days and times, by means of the said apron so being erected across the said river
Wandle,

Wandle, and the said water, so being on the several days and times aforesaid higher than it ought to have been, for a long time, to wit, for the space of ten hours, was on and at those several days and times, obstructed, stopped, hindered, and prevented from running and flowing unto and into the said river Thames, and thereby became and was penned back upon the mill of the said James Henckell, to wit, upon the wheels thereof, whereby the said last-mentioned mill was, for and during the respective times aforesaid, hindered, &c. *in tam amplo modo* &c. as in the fifth Count to the end]: And whereas, &c. [as ^{7th Count,} in the fifth Count to this mark §, only adding after the words ^{keeping} *without being penned back upon and obstructing the same, the* ^{con-} *words in any manner whatsoever,* then proceeding from the mark, say], by the mill of the said Richard Shepley, or the conduits thereof, or any other part of the same, upon the mill of the said James Henckell, or the wheels thereof, or any or either of them, so as to obstruct the said James Henckell in the working of his said mill in manner whatsoever, to wit, at the parish aforesaid; yet the said Richard Shepley, well knowing the said premises, but contriving, &c. hath wrongfully and unjustly kept and continued, and caused to be kept and continued divers, to wit, three conduits before then wrongfully and unjustly erected in the said river Wandle, and in and upon the bed thereof, in and belonging unto the said mill of the said Richard Shepley, of a great height, to wit, the height of three feet, being respectively much higher, to wit, three feet higher each than the same ought to have been, to wit, at the parish aforesaid, whereby the water, on the day and year aforesaid, and on divers other days and times between that day and the day of exhibiting this bill, running and flowing from the said mill of the said James Henckell unto the said mill of the said Richard Shepley towards the river Thames, for a long time, to wit, for the space of ten hours, on and at each of those several days and times, was by the means aforesaid obstructed, stopped, hindered, and prevented from running and flowing over and through the said conduits, so being wrongfully erected and placed on the said river Wandle, and in and upon the bed thereof, higher than they ought to have been, unto and into the said river Thames, and thereby became and was penned back upon the mill of the said James Henckell, for and during the respective times aforesaid, whereby, &c. [as in the fifth Count]: And whereas, &c. [exact- ^{8th Count,} ly like the sixth Count, to the mark §, except that the plaintiff's ^{keeping} *mill is not called ancient,* alledging that the water ought to have ^{waste} *flowed down to the said river Thames without being obstructed* ^{gates.} *and penned back by the mill of the said Richard Shepley, or the waste gates belonging thereunto upon the mill of the said James, or the wheels thereof, or any or either of them, so as to obstruct the said James Henckell in the working of his said mill in any manner whatsoever, to wit, at the parish aforesaid; yet the said Richard, well knowing the premises, but contriving, &c. hereto-*

fore,

5th Count, erecting and continuing a mill.

fore, to wit, on the first day of September, in the year 1777, and on divers other days and times between that day and the day of exhibiting the bill of the said James, wrongfully and unjustly kept and continued, and caused to be kept and continued certain gates, to wit, two gates erected in and upon and across a part of the said river Wandle below the mill of the said James, between the same and the said river Thames, and belonging and near to the said last mentioned mill of the said Richard, called waste gates, shut for a long time, to wit for the space of ten hours, at and on each and every of those days and times, and through the passage obstructed by the said gates had the same been open the water would have run and flowed into the river Thames, by means whereof the water of the said river on and at those several days and times running and flowing from the said mill of the said James towards the river Thames aforesaid, for a long time, to wit, for the space of ten hours, on and at those several days and times, was by the means aforesaid obstructed, stopped, hindered, and prevented from running and flowing into the said river Thames, and thereby became and was penned back upon the mill of the said James, to wit, on the wheels thereof, that is to say, for and during the respective times aforesaid; whereby, &c. [as in the fifth Count]: And whereas, &c. [as in the second Count to this mark †, but not calling the mill an ancient one] without being penned back upon and obstructing the said mill of the said James, or the wheels thereof, or any or either of them, so as in any manner to obstruct the working of the said mill, to wit, at the parish aforesaid; yet the said Richard, well knowing, &c. but contriving, &c. hath wrongfully and unjustly kept and continued, and caused to be kept and continued a certain large building, to wit, a building called a mill, before then wrongfully and unjustly erected and built over, upon, and across the said river Wandle below the said mill of the said James, and between the same and the river Thames, to wit, at the parish aforesaid, and thereby for a long time, to wit, during all that time, obstructed, stopped, hindered, and prevented the water of the aforesaid river Wandle from running and flowing unto and into the said river Thames, in so free and quick a manner as it otherwise would have done, and the said water thereby, for a long time, to wit, for and during all that time, became and was penned back upon the mill of the said James, to wit, on the wheels thereof, whereby the said last-mentioned mill was, for and during all that time, hindered and prevented from working in so large and ample a manner as it otherwise would have done, and the said James thereby lost and was deprived of the profit, benefit, and advantage that would otherwise have arisen and accrued unto him from the working of the said mill during the time aforesaid, to the said James his damage of two hundred pounds, and therefore he brings suit, &c. Pledges, &c.

J. MORGAN.

The

The defendant pleaded the general issue not guilty, upon which issue was joined. The cause was tried at the assizes before lord Mansfield and a special jury. The trial lasted the whole day, and a verdict was given for the defendant.

GREEN, CLERK, } **WORCESTERSHIRE,** to wit. Henry Green, clerk, vicar of Feckenham, in
against } the said county of Worcester, complains
PHILIPS, CLERK. } against Edward Phillips, clerk, being, &c.; for that whereas according to the law and custom of England hitherto obtained, used, and approved, all and singular the prebends, rectors, and vicars of churches for the time being within England aforesaid, are bound and ought to repair and uphold all and singular the houses, edifices, and buildings of the prebendaries, rectories, and vicarage, and to leave the same so repaired and upheld to their successors; And whereas the said Edward, late vicar of the said parish of Feckenham in right of the said vicarage, was seised of and in one dwelling-house, two stables, two barns, one coach-house and cow-house, one dove-house, and other outhouses, with the appurtenances, in Feckenham aforesaid, in the county aforesaid: And whereas the said benefice of the said church of Feckenham is, and at the said time when the said Edward was vicar thereof, and accepted the other benefice hereinafter mentioned, was benefice with cure of souls, and above the yearly value of eight pounds, to wit, of the yearly value of twenty pounds: And whereas the said Edward having the said benefice of the said church of Feckenham heretofore, to wit, on the tenth of September 1786, accepted and took another benefice with cure of souls, to wit, the vicarage of the parish church of Meopham, in the county of Kent, and was admitted, instituted, and inducted into the possession of the said church of Meopham; by means of which taking and acceptance of the said benefice of the aforesaid last-mentioned church, and the institution and induction into the possession thereof, and also by force of the statute in that case made and provided, the said church of Feckenham became vacant; and the said Henry afterwards, to wit, on the thirteenth of September 1786, at Feckenham aforesaid, in the said county of Worcester, was in due form of law presented to the said vicarage of the parish church of Feckenham aforesaid, so made vacant as aforesaid, and was instituted and inducted into the same, and still continues the vicar thereof, and was and is the lawful and next successor to the said Edward of and in the same; and the said Henry avers, that long before, and from thence until and at the said time when the said vicarage of Feckenham became vacant by the said acceptance of the said vicarage of Meopham by the said Edward as aforesaid, and long before, the dwelling-house, stables, barns, coach-house, cow-house, dove-house, and other out-houses, with the appurtenances, were very ruinous and in decay for want of necessary repairs thereof, and that so much as at the time when the said vicarage of Feckenham became vacant as aforesaid, was sufficient to be laid out in the necessary repairs of the said dwelling-house and premises, amounted

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amounted to a large sum of money, to wit, the sum of one hundred pounds of lawful money of Great Britain, of which the said Henry afterwards, and after the said vicarage was vacated by the said Edward as aforesaid, gave notice to the said Edward, and then and there demanded of him for the same the said sum of money so necessary as aforesaid; yet the said Edward, not regarding the premises, but devising and fraudulently intending craftily and subtilly to deceive and defraud the said Henry in this behalf, hath not yet paid to the said Henry the said sum of money, or any part thereof, nor any sum of money whatsoever for or towards the repairing the premises aforesaid, but to pay the same to the said Henry hath hitherto wholly refused, and still doth refuse; whereupon the said Henry says he is injured, and hath sustained damage to the value of one hundred pounds; therefore, &c. Pledges, &c.

Declaration.

Plaintiff was possessed of a house, which stood between two others. The defendant pulled down the two houses, whereby he exposed plaintiff's house to the weather, and rendered it unfit to live in. Plaintiff's goods damaged, and he obliged to get another house.

MIDDLESEX, to wit. William Norris, &c. were attached to answer John Buchanan, in a plea of trespass on the case; and thereupon the said J. B. by J. A. his attorney, complains; for that whereas the said J. B. before and at the time of the committing of the grievance hereinafter mentioned, was lawfully possessed of a certain messuage or dwelling-house, with the appurtenances, situate, standing, and being in the parish of, &c. in, &c. between two other messuages or dwelling houses there then situated; yet the said William, &c. contriving and wrongfully intending to injure the said J. B. and to deprive him of the use and benefit of his said messuage or dwelling-house, heretofore, to wit, on, &c. and on, &c. then next following, at, &c. in, &c. wrongfully and injuriously, and without the licence or consent, and against the will of the said J. B. pulled down and prostrated, and caused and procured, &c. the said several messuages or dwelling-houses, between which the said messuage or dwelling-house of the said J. B. was so situate and erected as aforesaid, whereby the said messuage or dwelling-house of the said J. B. was laid open and exposed to the weather, and the walls, roof, and tiling thereof, were considerably injured and damaged, and the said messuage or dwelling-house thereby became uninhabitable, and of no use to him the said J. B. and so remained and continued, whereby he the said J. B. was forced and obliged, at a considerable inconvenience and expence, and to the great hindrance, obstruction, and interruption of him in his said business of a taylor, to quit and leave his said messuage, and to hire another and different one; and the said J. B. also saith, that by reason of his said house being so laid open and exposed as aforesaid, divers goods and other furniture of the said J. B. therein being, of a large value, were greatly daubed, wetted, spoiled, injured, and damaged, and he the said J. B. hath also, since the committing the grievance aforesaid, been obliged to pay rent of and for the said messuage or dwelling-house, notwithstanding he hath, by reason of the grievance aforesaid, been unable to inhabit and use the same; and the said J. B. also was, hath been, and is on

occa.

occasion of the grievance, and of other the premises aforesaid, otherwise greatly injured and damnified; to wit, at, &c. in, &c. to the damage, &c. of five hundred pounds.

V. LAWES.

LANCASHIRE, to wit. James Armrod complains of Henry Hargreaves; for that whereas the said James, before and at the time of the committing of the grievance hereafter next mentioned, was, and from thence hitherto hath been, and still is possessed of divers, to wit, three acres of land, with the appurtenances, situate, lying, and being in the parish of, &c. in, &c.: And whereas a certain ancient river or water course there called Jewell River, from time whereof the memory of man is not to the contrary, until the time of committing the grievance hereafter next mentioned, did run and flow, and was used and accustomed to run and flow, and of right ought to have runned and flowed, and still of right ought to run and flow upon and over the said lands of the said James in great plenty and abundance, for the watering of the cattle from time to time depasturing and feeding in and upon the said land of said James, and for the more convenient enjoyment thereof, to wit, at, &c.; yet the said Henry, well knowing the premises, but contriving, &c. the said James, and to deprive him of the benefit and advantage of the said river or water course †, whilst the said James was so possessed of said land as aforesaid, to wit, on, &c. and from thence until the day of exhibiting the bill of said James against the said Henry, to wit, at, &c. *wrongfully and unjustly continued, and caused to be continued certain wear before then wrongfully and unjustly erected and set up in and across the said river or water course, and also a certain mill-race communicating therewith, before then wrongfully and unjustly cut, dug, and made above the said land of the said James, and thereby for and during all the time aforesaid, wrongfully and unjustly diverted and turned, and caused to be diverted and turned the said river or water course from and out of its ancient due and accustomed course with the said mill race, and hindered the same from running and flowing upon and over the said lands of the said James, in so copious and abundant a manner as it otherwise would, and of right ought to have done, to wit, at, &c. whereby the said James hath, during all the time aforesaid, lost and was deprived of the use, benefit, and advantage of the said river or water course for watering of cattle from time to time depasturing and feeding in and upon the said land of the said James, and was put to great trouble and expence in and about the watering of the same elsewhere than in the said river or water course, to wit, at, &c. : And whereas, &c. &c. [as in the first Count to this mark †] whilst the said James was so possessed of the said land as aforesaid, to wit, on, &c. at, &c. in, &c. wrongfully and injuriously cut, dug, and made a certain mill-race communicating with the said river or water course above the said land of the said James, much wider*

Declaration a-
end-
ant, for erecting
a wear and mill-
race, and divert-
ing the course of
a river which
used to run
through the
plaintiff's lands,
whereby he wa-
tered his cattle,
putting him to
great expence
in procuring wa-
ter for his cattle.

2d Count.

3d Count.

and deeper, to wit, five feet wider, and one foot deeper than the same had before then been, or then of right ought to be, and wrongfully and unjustly continued, and caused to be continued the said river or water course so wider and deeper as aforesaid for a long space of time, to wit, from thence until the day of exhibiting the bill of the said James against the said Henry, and thereby for and during all the time aforesaid, wrongfully and unjustly diverted and turned, and caused to be diverted and turned the said river or water course from and out of its ancient, due, and accustomed course into the said mill-race, and hindered and prevented the same from running or flowing upon or over the said land of the said James in so copious and abundant a manner as it otherwise would and of right ought to have done, to wit, at, &c. whereby the said James, for and during all the time last aforesaid, lost, &c. &c. [as before]: And whereas, &c. &c. [like the first, omitting what is in *Italic*, &c.]

GEO. WOOD.

Declaration for tilting a leaden box which had been placed between the plaintiff's and defendant's cistern for the purpose of carrying the rain water from their two house-tops into each of them equally, and thereby conveying it wholly into that of defendant.

CITY OF BRISTOL, to wit. William Bawden complains of John Hinch being, &c. of a plea; for that whereas the said plaintiff, on the first day of February A. D. 1779, and for a long time, to wit, for the space of six years then last past, was, and from thence hitherto hath been, and still is lawfully possessed of and in a certain messuage or dwelling-house, with the appurtenances, situate in the city of Bristol, in the county of the same city, in which said messuage or dwelling-house he the said plaintiff, with his family, for and during all the time aforesaid, hath inhabited and dwelt, and still doth inhabit and dwell; and the said defendant also, on the said first day of February A. D. 1779, was, and from thence hitherto hath been, and still is possessed of and in a certain other messuage or dwelling-house, with the appurtenances, situate in, &c. aforesaid, and being contiguous and next adjoining to the said messuage or dwelling-house of the said defendant, he the said defendant with his family hath, during all the time last aforesaid, inhabited and dwelt: And whereas long before the committing of the grievance hereafter mentioned, there was and ought to have been, and from thence hitherto there hath been and ought to have been, and there still is and ought to be a certain cistern or reservoir heretofore made and dug under and beneath a certain kitchen of and belonging to the said messuage or dwelling-house of the said defendant, for the reception of the rain water from time to time descending from the heavens on and upon the respective tops of the said respective messuages of the said plaintiff and defendant from thence into the said cistern or reservoir, through certain pipes and spouts before then, and during all the time aforesaid, respectively fixed and appurtenant to the said respective messuages of the said plaintiff and defendant into the said cistern and reservoir for the necessary supplying the respective owners of the said two respective messuages for the time being with

with rain water, to be used and expended in the said respective messuages by the respective owners of the said respective messuages for the time being, for their respective uses in common, until the dividing and parting of the said cistern and reservoir hereafter mentioned, and which said cistern or reservoir always from the time of the first digging and making thereof until the division and parting thereof hereafter mentioned, was one whole and entire cistern or reservoir for the purposes aforesaid, without any division whatsoever, and which said cistern or reservoir was, before the commitment of the grievance hereafter mentioned, and during the occupation and possession of the said plaintiff and defendant respectively of their said respective messuages, to wit, on, &c. at, &c. aforesaid, divided between the said plaintiff and defendant by and with their mutual consent, by a certain wall erected in and across the said cistern or reservoir, and by the said plaintiff and defendant allotting (between themselves) one part of the said cistern or reservoir to the sole use of the occupier of the said messuage, now of the said defendant for the time being, and the other part of the said cistern or reservoir to the sole use of the occupier of the said messuage, now of the said plaintiff for the time being, and by the placing and fixing a certain leaden box with two spouts upon the said wall, a little below or under the main spout or pipe, so conveying the said rain water from the said respective tops of the said respective messuages into the said cistern or reservoir, so that the said rain water might for the then future run out of the said main spout or pipe into the said leaden box in an exact level, and from thence in an equal degree out of the said leaden box by and through the said respective spouts of the said leaden box respectively into the said respective parts of the said cistern or reservoir so respectively allotted to the said plaintiff and defendant, as the respective occupiers of the said respective messuages, one of the said spouts of the said leaden box letting out the said rain water into that part of the said cistern or reservoir allotted to the said plaintiff, and the other of the said spouts letting out the said rain water into the said part of the said cistern or reservoir so allotted to the said defendant, and by reason of the said dividing, parting, and allotting of the said cistern or reservoir in manner aforesaid, ever since the said dividing and parting of the said cistern or reservoir hitherto, the said rain water conveyed as aforesaid from the said tops of the said respective messuages into the said leaden box, ought to have run in great plenty and abundance from and out of the said leaden box through the spout of the said leaden box, being next the said messuage of the said plaintiff, into that part of the said cistern or reservoir so allotted to the said plaintiff for the necessary supplying of the said plaintiff and his family, so residing and dwelling in his said messuage, with rain water, to be spent and used by them in and upon the said messuage of the said plaintiff, in and about the necessary uses of the said plaintiff and his family there; yet the said defendant, well knowing, &c. but contriving, &c. to hurt, injure, and prejudice the said plaintiff, and to deprive him

of the benefit and advantage of his said allotment of the said cistern or reservoir, and of the said rain water which from and after the said division and parting of the said cistern or reservoir, ought to have run and come by the means aforesaid into that part of the said cistern or reservoir so allotted to the said plaintiff as aforesaid, while he the said plaintiff was so possessed of his said messuage as aforesaid, and inhabited therein with his family as aforesaid, and after the said division and parting of the said cistern or reservoir as aforesaid, and after the said placing and fixing of the said leaden box upon the said wall for the purpose aforesaid, and before the day of exhibiting, &c. to wit, on the said, &c. at, &c. in, &c. aforesaid, wrongfully, &c. by then and there wrongfully, &c. putting, &c. and causing and procuring, &c. certain stays, props, nails, and wedges, under that part of the said leaden box so placed and fixed upon the said wall for the purpose aforesaid, which so was to convey and ought to have conveyed the rain water into that part of the said cistern or reservoir which was and had been on the said division allotted to the said plaintiff in respect of his said messuage as aforesaid, and thereby, &c. raising and keeping raised therewith on that side of the leaden box next to that part of the said divided cistern or reservoir so allotted to the said plaintiff higher than that side of the said leaden box next the part of the said cistern or reservoir so allotted to the said defendant as aforesaid, by means whereof that part of the said rain water which during all that last-mentioned time ought to have run out of the said leaden box into that part of the said cistern or reservoir so allotted to the said plaintiff as the occupier of his said messuage, was prevented and hindered from running into the said part of the said cistern or reservoir so allotted to the said plaintiff as aforesaid; and the said plaintiff thereby, during all that time, hath lost and been deprived of the benefit of that part of the said rain water which during that last-mentioned time ought to have run out of the said leaden box into the said part and division of the said cistern or reservoir so allotted to him as aforesaid, and could not have or enjoy the benefit of that part of the said rain water, or of his said allotment of the said cistern or reservoir in so large, copious, and beneficial a manner as he, during all that time, ought to have had and enjoyed the same. Damages forty pounds, &c.

The defendant pleaded not guilty, but the plaintiff had a verdict with one shilling damages and costs.

Drawn by MR. WARREN.

Declaration at the suit of the landlord of two houses, for building so near to two dwelling-houses, with the appurtenances, situate, standing, them as to obstruct the window lights.

MIDDLESEX, to wit. J. S. complains of J. H. being, &c.; for that whereas the said J. S. on the first day of May A. D. 1770, and before, was, and yet is seised of and in divers, to wit, two dwelling-houses, with the appurtenances, situate, standing, and being in the parish of St. Ann, Limehouse, otherwise St. Ann, in the county of Middlesex, in his demesne as of fee, which said

said dwelling-houses, during all the time aforesaid, were in the respective tenures or occupations of R. B. and one J. D. as tenants thereof to the said J. S. : And whereas during all the time aforesaid there were, and of right ought to have been, and yet are and of right ought to be divers, to wit, four windows on the east side of the said dwelling-houses in the occupation of the said R. B. and divers, to wit, two windows on the east side of the said dwelling-house in the occupation of the said J. D. through which said windows respectively the light on the said, &c. came and entered, and of right ought to have come and entered, and from thence hitherto of right ought to come and enter into the said dwelling-houses respectively; yet the said J. H. well knowing, &c. but contriving, &c. to aggrieve the said J. S. in this behalf, and to obstruct and hinder the light from entering and coming through the said windows into the said dwelling-houses respectively, and to injure the said J. S. in his hereditary estate of and in the said dwelling-houses respectively, whilst the said J. S. was so seised of the said dwelling-houses respectively, and the said dwelling-houses were to be occupied by the said R. B. and J. D. respectively, as tenants thereof to the said J. S. as aforesaid, to wit, on the twenty-eighth day of September, A. D. 1771, at &c. &c. wrongfully and injuriously erected and built, and caused, &c. a certain erection and building of great height and length, to wit, of the height of twenty-six feet, and of the length of fifty-six feet, and from thence hitherto hath wrongfully and injuriously kept and continued the said erection or building erected and built so near unto the said dwelling-houses of the said J. S. respectively, that by reason thereof the light, during all the time last aforesaid, hath been and yet is obstructed and hindered from entering through the said windows into the said dwelling-houses respectively, in so ample and beneficial a manner as it ought to have done, and the said respective dwelling-houses of the said J. S. were and are thereby greatly disturbed, and are greatly darkened, and are greatly injured, &c. in value, and the said J. S. is greatly prejudiced in his hereditary estate of and in the same, to wit, at the said, &c. in, &c. : And whereas the said J. S. on the said, &c. and before, was and yet is seised in his demesne as of fee of and in divers, to wit, two dwelling-houses and two yards, with the appurtenances, situate, &c. at, &c. in, &c. ; which said last-mentioned dwelling-houses and yards, during all the time aforesaid, were in the respective tenures or occupations of the said R. B. and J. D. as tenants thereof to the said J. S. : And whereas also the said J. H. on the same, &c. and before, was possessed of and in a certain piece or parcel of ground lying near unto the said last-mentioned dwelling-houses of the said J. S. towards the west, and divided therefrom by a certain way or passage, to wit, at, &c. in, &c. ; and the said J. being so seised of and in the said last-mentioned dwelling-houses and yards, and the said J. H. being so possessed of the said ground, with the appurtenances, as aforesaid, he the said J. H. afterwards, to wit, on the said, &c. at, &c. wrongfully and injuriously newly erected and built, and caused, &c. a certain erection or

ad Count, rain
water falling
from new erec-
tions.

3d Count, ob-
structing passage
or way.

building, partly upon his said ground, and partly upon the said way or passage nearer to the said dwelling houses and yards of the said J. than any building had ever before been erected or built, and hath contrary from thence hitherto continued the said erection or building so there wrongfully and injuriously erected and built; yet the said J. H. well knowing, &c. aforesaid, but contriving, &c. to injure and aggrieve the said J. in his hereditary estate of and in his said last-mentioned dwelling-houses and yards respectively on the same, &c. at the said, &c. so situated his said new erection or building, and erected and built the same there in such a manner and so near unto the said dwelling-houses and yards of the said J. that the rain water which from time to time, from the time of the erecting and building of the said erection or building of the said J. H. hitherto hath descended and fallen on and upon the said new building or erection of the said J. H. hath run and flowed from thence on and upon the said last-mentioned dwelling-houses and yards of the said J. respectively, whereby the fences of the said last-mentioned dwelling-houses and yards of the said J. respectively are greatly damaged, decayed, rotted, and spoiled, and the same messuages and yards respectively are rendered of less use to the tenants of the said J. as occupiers thereof, and the said J. during all the time last aforesaid, hath been and yet is greatly injured in his hereditary estate of and in the said last-mentioned dwelling-houses and yards respectively, and the tenants of the said J. of and in the said respective dwelling-houses and yards, have threatened and are about to leave the same, to wit, at, &c.: And whereas also the said J. on, &c. was, and continually from thence hitherto hath been, and still is seised of and in divers, to wit, two other, &c. situate, &c. in the respective, &c. and by reason thereof the said J. during of the time aforesaid, of right ought to have had, and yet of right ought to have for his tenants, occupiers of the said last-mentioned dwelling-houses respectively, a certain way from a certain street at, &c. called Philpot-street, otherwise Ropemaker's-fields, into and along a certain court or yard unto the said last-mentioned dwelling-houses of the said J. respectively, and so back again by the same way from the said last-mentioned dwelling-houses of the said J. respectively, unto and into the said street, to go, pass, and repass on foot at all times of the year, at their free will and pleasure; yet the said J. H. well knowing, &c. but contriving, &c. to aggrieve the said J. and to injure him in his hereditary estate of and in the said last-mentioned dwelling-house, and to deprive the tenants of the said J. occupiers of the said last-mentioned dwelling-houses respectively, of the use and enjoyment of the said way or passage on the said, at, &c. aforesaid, wrongfully and injuriously erected, built, and set up, and caused, &c. a certain messuage or building in and upon a great part of the said court or yard, and kept and continued the same so there erected, built, and set up, for a long time, to wit, from thence hitherto, &c. still encroached upon the said court or yard, by reason whereof
the

the said way or passage, during all the time last aforesaid, hath been and is rendered so strait and narrow, that the said tenants of the said J. occupiers of the said last-mentioned dwelling-houses of the said J. respectively, could not have the use and enjoyment of the said way or passage in so ample and beneficial a manner as they ought to have had, and the said last-mentioned dwelling-houses of the said J. respectively are thereby rendered almost useless, and the hereditary estate of the said J. of and in the said last-mentioned dwelling-houses respectively, is greatly diminished in value, and the tenants of the said J. occupiers of the said last-mentioned dwelling-houses respectively, daily threaten to leave the same, to wit, at, &c. aforesaid: And whereas also [state that the plaintiff was seised of two dwelling-houses, &c. as in the last Count]; by reason thereof the said J. during all the time aforesaid of right ought to have had, and yet ought to have for his tenants and occupiers of the said last-mentioned dwelling-houses respectively, the use and privilege of a certain privy or house of office situate, &c. near unto the said last-mentioned dwelling-houses of the said J. at all times of the year at their free will and pleasure, as belonging and appertaining to the said last-mentioned dwelling-houses respectively of the said J.; yet the said J. H. well knowing, &c. but contriving, &c. to aggrieve the said J. and to injure him in his hereditary estate of and in the said last-mentioned dwelling-houses respectively, and to deprive the tenants of the said J. occupiers of the said last-mentioned dwelling-houses respectively, of the use and enjoyment of the said privy or house of office on the said, &c. at, &c. aforesaid, wrongfully, &c. pulled down, threw down, prostrated, and destroyed, and caused, &c. part of the said privy or house of office, and kept and continued a great part of the said privy or house of office there so pulled down, &c. for a long time, to wit, from thence hitherto, by reason whereof the occupiers of the said last-mentioned dwelling-houses of the said J. respectively, during all the time last aforesaid, have been deprived of the use and enjoyment of the said privy or house of office, and could not use the same in such manner as they of right ought to have done and ought to do, and the said last-mentioned dwelling-houses of the said J. respectively are rendered almost useless, and the hereditary estate of the said J. of and in the said last-mentioned dwelling-houses respectively, is greatly diminished in value, to wit, at the said, &c. in, &c. aforesaid; whereupon the said J. saith he is injured, and hath sustained damage to the value of two hundred pounds, and therefore he brings suit, &c.

W. BALDWIN.

SURRY, to wit. Robert Bruce, late of, &c. jailor, was attached to answer unto William Bryant, Mary his wife, and Sarah Morris, in a plea of trespass on the case; and thereupon the Declaration at the suit of coparceners in fee of copyhold premises, and the husband of one of them, for cutting down trees, and digging in the soil with a conversion.

said plaintiffs, by their attorney, complain, that whereas the manor of Banstead, in the, &c. now is, and from time whereof, &c. hath been an ancient manor, and in the manor of Banstead there now are, and during all the time aforesaid have been divers customary tenements within, and parcel of the said manor aforesaid, demised and demiseable by copy of the court rolls of the said manor, by the lord of the said manor for the time being, or by his steward of the courts of the said manor for the time being, to any person or persons willing to take the same in fee simple, or otherwise, at the will of the said lord, according to the said manor, to wit, at, &c. : And whereas before and at the time of the committing of the grievance hereinafter mentioned, to wit, on, &c. a certain messuage or tenement, &c. within the said manor, and abutting, &c. together with the orchard, &c. situate, lying, and being in the parish of, &c. aforesaid, and within the said manor, were a customary tenement of the manor aforesaid, demised and demiseable, &c. &c. [as before], to wit, at, &c. aforesaid : And whereas afterwards, and before the committing, &c. to wit, on, &c. at, &c. aforesaid, Rowland Frye, esquire, was lord of the said manor of Banstead, whereof the said customary tenement was parcel, and the said R. F. esquire, so being lord of the said manor of Banstead whereof, &c. afterwards, and whilst he was so lord of the said manor, and before the committing, &c. to wit, at the court baron of the said R. F. esquire, holden in and for the manor of Banstead aforesaid, on Monday, the eleventh day of April, in the third year of the reign, &c. A. D. 1763, by and before Thursto Blackman, gentleman, steward there, by the copy of the court rolls of the said manor, granted the said customary tenement, with the appurtenances, to the said M. whilst she was sole then Mary Morris, spinster, and to the said S. M. to have and to hold the same, with the appurtenances, unto them the said M. and S. M. their heirs and assigns for ever, as coparceners of the lord of the said manor, at the will of the lord, according to the custom of the said manor ; by virtue whereof the said M. whilst she was sole, and the said S. M. afterwards, and before the committing, &c. to wit, on the said, &c. to wit, at, &c. aforesaid, entered into the said customary tenement, with the appurtenances, and became and were thereof seised in their demesne as of fee at the will of the lord, according to the custom of the said manor ; and the said M. and S. being so seised of the said customary tenement, with the appurtenances, she the said M. afterwards, to wit, on, &c. to wit, at, &c. aforesaid, intermarried with and took to husband the said W. B. by means whereof the said W. B. and M. his wife, in right of the said M. became and were seised in coparcenery with the said S. in their demesne as of fee at the will of the lord, according to the custom of the manor aforesaid of the estate and interest of the said M. to wit, in coparcenery together with the said S. of and in the said customary tenement, with the appurtenances ; and the said W. and M. in right of the said M. and the said S. have from thence hitherto been, and still

are seised in their demesne as of fee at the will of the lord, according to the custom of the said manor of and in the said customary tenement, with the appurtenances: And the said W. and M. his wife and S. further say, that they being so seised as aforesaid, one Samuel Morris, before and at the time of the committing, &c. and long afterwards, was possessed of the said customary tenement, with the appurtenances, to wit, as tenant thereof to the said W. and M. his wife, and S. to wit, at, &c. aforesaid; yet the said R. well, &c. but contriving, &c. to hurt, injure, and prejudice the said W. and M. his wife, and S. in their hereditary estate of and in their aforesaid customary tenement, with the appurtenances, and to damage the same whilst they the said W. and M. in right of the said M. and S. were so seised of the customary tenement, with the appurtenances, and whilst the same was so in the possession of the said Samuel M. as tenant thereof to them the said W. and M. his wife, and S. as aforesaid, to wit, on, &c. at, &c. aforesaid, wrongfully and unjustly entered into the said close called, &c. parcel of the said customary tenement as aforesaid, and did then and there wrongfully and unjustly cause and procure to be cut down, &c. divers timber trees and fruit trees, to wit, &c. &c. there then lately standing, growing, and being in the said close called, &c. parcel, &c. each and every of the said trees being of a large value, to wit, of the value of forty shillings, and took and carried away the same, and converted and disposed thereof to his own use, and did then and there with spades, pick axes, and other iron instruments, wrongfully and unjustly dig up, tear up, &c. and wrongfully and unjustly cause, &c. the soil, to wit, one hundred perches of the soil of the said W. and M. his wife, and S. in the said close called, &c. parcel, &c. and took and carried away, and caused to be taken and carried away the soil and earth, to wit, six cart loads of the soil, &c. of the said W. and M. his wife, each and every of the said cart-loads of soil, and each and every of the said cart-loads of earth being of a large value, to wit, of the value of ten shillings, and took and carried away the same, and converted and disposed thereof to his own use, to the great damage and injury of the said W. and M. his wife, and S. of and in their hereditary estate of and in the said close, parcel, &c. so being in the possession of the said Samuel M. as tenant thereof to them as aforesaid, and the said W. and M. his wife, and S. by means of the premises aforesaid, have been and are otherwise greatly injured and damaged in their estate aforesaid, to wit, at, &c.; And whereas, &c. &c. [the second Count contained the same charge as the first], the only difference between them was, that the plaintiffs did not in the second state their title specially, as in the first, but say generally (a), that they the plaintiffs, at the time of committing, &c. and long before, were seised in their demesne as of fee, at the will of the lord, &c.

(a) Qu. Whether that would not be demurrable?

Special pleas thereto, deducing a title through several descents to another person, as tenant in tail, under a custom of the manor in the nature of borough English, as servant to whom defendant justifies traversing the seisin of the plaintiff, (protesting against the grant to plaintiff, that they were not seized as alleged in the declaration.

Plea, first, not guilty; secondly, as to the several supposed grievances, (after stating that the tenement, close, and supposed grievances in each of the Counts mentioned, are in fact one and the same, and confessing the existence of the manor, and that within the said manor there are divers customary tenements demised and demiseable, &c. as stated in the declaration; the defendant, by way of justification, pleaded as follows :) Yet for plea in this behalf, the defendant saith, that the said customary tenements, with the appurtenances, in the said declaration mentioned, and in which, &c. now is, and for a long time before and on the twelfth day of October, which was in A. D. 1664, and from thence until and at the time of the committing, &c. in the said declaration mentioned, was, and from thence hitherto hath been, and still is within and part and parcel of the manor of Banstead aforesaid, in the said declaration mentioned, and a customary tenement of that manor, demised and demiseable by copy of the court rolls of the said manor for the time being, or by his steward of the courts of the said manor for the time being, to any person or persons willing to take the same in fee simple or otherwise, at the will of the lord, according, &c. to wit, at, &c. aforesaid: And the said defendant further saith, that *within the said manor of Banstead there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of, that is to say, that when and so often as any person being seised in fee simple or fee tail at the will of the lord, according, &c. of any customary tenement, with the appurtenances, parcel of the said manor, hath died so seised thereof, leaving two or more sons of his body lawfully begotten him surviving, that then and in any such case, every such customary tenement, with the appurtenances, descends and comes to, and hath during all the time last aforesaid, by the custom of the said manor, descended and come to, and hath been used and accustomed to descend and come to, and of right according to the said custom, ought to descend and come to the youngest son of every such person so dying seised thereof as aforesaid, to have and to hold the same unto such youngest son accordingly, at the will of the lord according, &c. to wit, at the parish aforesaid: And the said defendant further saith, that long before the committing, &c. in the said declaration mentioned, to wit, on the said, &c. at, &c. aforesaid, one A. B. was seised of the manor aforesaid, with the appurtenances, in his demesne as of fee, and was lord of the said manor of Banstead, whereof the said customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. then was and yet is parcel, and the said A. B. so being seised, and lord of the said manor, whereof, &c. afterwards, and whilst he was so seised and lord of the said manor, and long before the committing, &c. in said declaration mentioned, to wit, at the court baron of the said A. B. so then being lord of the said manor of Banstead holden in and for the said manor, on Monday, the said, &c. aforesaid, by Edward Thurland, esq. his steward there,*

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by the copy of the court rolls of the said manor granted the said customary tenement, with the appurtenances, in the said declaration mentioned, and in which, &c. to Andrew Stephens, deceased, in his lifetime, and Ann his wife also deceased, in her lifetime, to have and to hold to the said Andrew Stephens and Ann his wife, and the heirs of their bodies lawfully begotten or to be begotten, and for default of such issue, to the use and behoof of the said heirs of the said Andrew Stephens for ever, at the will of the lord, according, &c.; by virtue of which said grant the said Andrew Stephens in his lifetime, and A. his wife in her lifetime, afterwards, and long before the committing, &c. to wit, on the said, &c. aforesaid, entered into the said customary tenement, with the appurtenances, in the said declaration mentioned, and in which, &c. so granted as aforesaid, and became and were thereof seised in their demesne as of fee tail, at the will of the lord, according, &c.: And the said defendant further saith, that the said Andrew Stephens and A. his wife being so seised of the said customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. after the said grant, and whilst they were so seised of the said customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. and long before the committing, &c. to wit, on the said, &c. at, &c. aforesaid, the said Andrew Stephens and Ann his wife died, and each of them died; and that the said Ann Stephens, who survived the said Andrew Stephens, left at the time of her death a *youngest* son, (ACCORDING TO THE CUSTOM OF THE SAID MANOR, AN) heir on her body by the said Andrew Stephens lawfully begotten her surviving, that is to say, one William Stephens, to wit, at, &c. aforesaid, and that the said William Stephens, after the death of the said Andrew Stephens and A. his wife, to wit, on the said, &c. at the, &c. aforesaid, as *youngest* [SUCH] son and heir of the bodies of the said Andrew Stephens and Ann his wife lawfully begotten, entered into, and then and there became and was seised of and in the said customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. in his demesne as of fee tail, at the will of the lord, according to the custom of the said manor: And the said defendant further saith, that the said William Stephens being so seised of the customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. as aforesaid, he the said William Stephens afterwards, and whilst he was so thereof seised, and long before the committing, &c. to wit, on the said, &c. at, &c. aforesaid, died, leaving at the time of his death a *youngest* son [ACCORDING TO THE CUSTOM OF THE SAID MANOR, AN] heir of his body lawfully begotten, that to say, one John Stephens him surviving, to wit, at, &c. aforesaid; And the said defendant further saith, that upon the death of the said William Stephens as aforesaid, the said John Stephens then and there, to wit, on the day and year last aforesaid, as (SUCH) *youngest* son and heir of the said William Stephens lawfully begotten

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said plaintiffs, by their attorney, complain, that whereas the manor of Banstead, in the, &c. now is, and from time whereof, &c. hath been an ancient manor, and in the manor of Banstead there now are, and during all the time aforesaid have been divers customary tenements within, and parcel of the said manor aforesaid, demised and demiseable by copy of the court rolls of the said manor, by the lord of the said manor for the time being, or by his steward of the courts of the said manor for the time being, to any person or persons willing to take the same in fee simple, or otherwise, at the will of the said lord, according to the said manor, to wit, at, &c. : And whereas before and at the time of the committing of the grievance hereinafter mentioned, to wit, on, &c. a certain messuage or tenement, &c. within the said manor, and abutting, &c. together with the orchard, &c. situate, lying, and being in the parish of, &c. aforesaid, and within the said manor, were a customary tenement of the manor aforesaid, demised and demiseable, &c. &c. [as before], to wit, at, &c. aforesaid : And whereas afterwards, and before the committing, &c. to wit, on, &c. at, &c. aforesaid, Rowland Frye, esquire, was lord of the said manor of Banstead, whereof the said customary tenement was parcel, and the said R. F. esquire, so being lord of the said manor of Banstead whereof, &c. afterwards, and whilst he was so lord of the said manor, and before the committing, &c. to wit, at the court baron of the said R. F. esquire, holden in and for the manor of Banstead aforesaid, on Monday, the eleventh day of April, in the third year of the reign, &c. A. D. 1763, by and before Thursto Blackman, gentleman, steward there, by the copy of the court rolls of the said manor, granted the said customary tenement, with the appurtenances, to the said M. whilst she was sole then Mary Morris, spinster, and to the said S. M. to have and to hold the same, with the appurtenances, unto them the said M. and S. M. their heirs and assigns for ever, as coparceners of the lord of the said manor, at the will of the lord, according to the custom of the said manor ; by virtue whereof the said M. whilst she was sole, and the said S. M. afterwards, and before the committing, &c. to wit, on the said, &c. to wit, at, &c. aforesaid, entered into the said customary tenement, with the appurtenances, and became and were thereof seised in their demesne as of fee at the will of the lord, according to the custom of the said manor ; and the said M. and S. being so seised of the said customary tenement, with the appurtenances, she the said M. afterwards, to wit, on, &c. to wit, at, &c. aforesaid, intermarried with and took to husband the said W. B. by means whereof the said W. B. and M. his wife, in right of the said M. became and were seised in coparcenery with the said S. in their demesne as of fee at the will of the lord, according to the custom of the manor aforesaid of the estate and interest of the said M. to wit, in coparcenery together with the said S. of and in the said customary tenement, with the appurtenances ; and the said W. and M. in right of the said M. and the said S. have from thence hitherto been, and still

are seised in their demesne as of fee at the will of the lord, according to the custom of the said manor of and in the said customary tenement, with the appurtenances: And the said W. and M. his wife and S. further say, that they being so seised as aforesaid, one Samuel Morris, before and at the time of the committing, &c. and long afterwards, was possessed of the said customary tenement, with the appurtenances, to wit, as tenant thereof to the said W. and M. his wife, and S. to wit, at, &c. aforesaid; yet the said R. well, &c. but contriving, &c. to hurt, injure, and prejudice the said W. and M. his wife, and S. in their hereditary estate of and in their aforesaid customary tenement, with the appurtenances, and to damage the same whilst they the said W. and M. in right of the said M. and S. were so seised of the customary tenement, with the appurtenances, and whilst the same was so in the possession of the said Samuel M. as tenant thereof to them the said W. and M. his wife, and S. as aforesaid, to wit, on, &c. at, &c. aforesaid, wrongfully and unjustly entered into the said close called, &c. parcel of the said customary tenement as aforesaid, and did then and there wrongfully and unjustly cause and procure to be cut down, &c. divers timber trees and fruit trees, to wit, &c. &c. there then lately standing, growing, and being in the said close called, &c. parcel, &c. each and every of the said trees being of a large value, to wit, of the value of forty shillings, and took and carried away the same, and converted and disposed thereof to his own use, and did then and there with spades, pick axes, and other iron instruments, wrongfully and unjustly dig up, tear up, &c. and wrongfully and unjustly cause, &c. the soil, to wit, one hundred perches of the soil of the said W. and M. his wife, and S. in the said close called, &c. parcel, &c. and took and carried away, and caused to be taken and carried away the soil and earth, to wit, six cart loads of the soil, &c. of the said W. and M. his wife, each and every of the said cart-loads of soil, and each and every of the said cart-loads of earth being of a large value, to wit, of the value of ten shillings, and took and carried away the same, and converted and disposed thereof to his own use, to the great damage and injury of the said W. and M. his wife, and S. of and in their hereditary estate of and in the said close, parcel, &c. so being in the possession of the said Samuel M. as tenant thereof to them as aforesaid, and the said W. and M. his wife, and S. by means of the premises aforesaid, have been and are otherwise greatly injured and damaged in their estate aforesaid, to wit, at, &c.; And whereas, &c. &c. [the second Count contained the same charge as the first], the only difference between them was, that the plaintiffs did not in the second state their title specially, as in the first, but say generally (a). that they the plaintiffs, at the time of committing, &c. and long before, were seised in their demesne as of fee, at the will of the lord, &c.

(a) Q. Whether that would not be demurrable?

Plea,

Special pleas thereto, deducing a title through several descents to another person, as tenant in tail, under a custom of the manor in the nature of borough English, as servant to whom defendant justifies traversing the seisin of the plaintiffs, (protesting against the grant to plaintiffs, that they were not seized as alleged in the declaration.

Plea, first, not guilty; secondly, as to the several supposed grievances, (after stating that the tenement, close, and supposed grievances in each of the Counts mentioned, are in fact one and the same, and confessing the existence of the manor, and that within the said manor there are divers customary tenements demised and demiseable, &c. as stated in the declaration; the defendant, by way of justification, pleaded as follows :) Yet for plea in this behalf, the defendant saith, that the said customary tenements, with the appurtenances, in the said declaration mentioned, and in which, &c. now is, and for a long time before and on the twelfth day of October, which was in A. D. 1664, and from thence until and at the time of the committing, &c. in the said declaration mentioned, was, and from thence hitherto hath been, and still is within and part and parcel of the manor of Banstead aforesaid, in the said declaration mentioned, and a customary tenement of that manor, demised and demiseable by copy of the court rolls of the said manor for the time being, or by his steward of the courts of the said manor for the time being, to any person or persons willing to take the same in fee simple or otherwise, at the will of the lord, according, &c. to wit, at, &c. aforesaid: And the said defendant further saith, that *within the said manor of Banstead there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of, that is to say, that when and so often as any person being seised in fee simple or fee tail at the will of the lord, according, &c. of any customary tenement, with the appurtenances, parcel of the said manor, hath died so seised thereof, leaving two or more sons of his body lawfully begotten him surviving, that then and in any such case, every such customary tenement, with the appurtenances, descends and comes to, and hath during all the time last aforesaid, by the custom of the said manor, descended and come to, and hath been used and accustomed to descend and come to, and of right according to the said custom, ought to descend and come to the youngest son of every such person so dying seised thereof as aforesaid, to have and to hold the same unto such youngest son accordingly, at the will of the lord according, &c. to wit, at the parish aforesaid: And the said defendant further saith, that long before the committing, &c. in the said declaration mentioned, to wit, on the said, &c. at, &c. aforesaid, one A. B. was seised of the manor aforesaid, with the appurtenances, in his demesne as of fee, and was lord of the said manor of Banstead, whereof the said customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. then was and yet is parcel, and the said A. B. so being seised, and lord of the said manor, whereof, &c. afterwards, and whilst he was so seised and lord of the said manor, and long before the committing, &c. in said declaration mentioned, to wit, at the court baron of the said A. B. so then being lord of the said manor of Banstead holden in and for the said manor, on Monday, the said, &c. aforesaid, by Edward Thurland, esq. his steward there,*

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by the copy of the court rolls of the said manor granted the said customary tenement, with the appurtenances, in the said declaration mentioned, and in which, &c. to Andrew Stephens, deceased, in his lifetime, and Ann his wife also deceased, in her lifetime, to have and to hold to the said Andrew Stephens and Ann his wife, and the heirs of their bodies lawfully begotten or to be begotten, and for default of such issue, to the use and behoof of the said heirs of the said Andrew Stephens for ever, at the will of the lord, according, &c.; by virtue of which said grant the said Andrew Stephens in his lifetime, and A. his wife in her lifetime, afterwards, and long before the committing, &c. to wit, on the said, &c. aforeaid, entered into the said customary tenement, with the appurtenances, in the said declaration mentioned, and in which, &c. so granted as aforeaid, and became and were thereof seised in their demesne as of fee tail, at the will of the lord, according, &c.: And the said defendant further saith, that the said Andrew Stephens and A. his wife being so seised of the said customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. after the said grant, and whilst they were so seised of the said customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. and long before the committing, &c. to wit, on the said, &c. at, &c. aforeaid, the said Andrew Stephens and Ann his wife died, and each of them died; and that the said Ann Stephens, who survived the said Andrew Stephens, left at the time of her death a *youngest* son, (ACCORDING TO THE CUSTOM OF THE SAID MANOR, AN) heir on her body by the said Andrew Stephens lawfully begotten her surviving, that is to say, one William Stephens, to wit, at, &c. aforeaid, and that the said William Stephens, after the death of the said Andrew Stephens and A. his wife, to wit, on the said, &c. at the, &c. aforeaid, as *youngest* [SUCH] son and heir of the bodies of the said Andrew Stephens and Ann his wife lawfully begotten, entered into, and then and there became and was seised of and in the said customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. in his demesne as of fee tail, at the will of the lord, according to the custom of the said manor: And the said defendant further saith, that the said William Stephens being so seised of the customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. as aforeaid, he the said William Stephens afterwards, and whilst he was so thereof seised, and long before the committing, &c. to wit, on the said, &c. at, &c. aforeaid, died, leaving at the time of his death a *youngest* son [ACCORDING TO THE CUSTOM OF THE SAID MANOR, AN] heir of his body lawfully begotten, that to say, one John Stephens him surviving, to wit, at, &c. aforeaid; And the said defendant further saith, that upon the death of the said William Stephens as aforeaid, the said John Stephens then and there, to wit, on the day and year last aforeaid, as (SUCH) *youngest* son and heir of the said William Stephens lawfully begotten

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ten, entered into and became and was seised, &c. (as before). And the said defendant further saith, that the said John Stephens being so seised of the said customary tenement, with the appurtenances in the said declaration mentioned, and in a certain, &c. as aforesaid, he the said John Stephens afterwards, and whilst he was so thereof seised, and long before the committing, &c. to wit, on the thirtieth day of September A. D. 1770, at, &c. aforesaid, died, leaving at the time of his death *a youngest son*, and [ACCORDING TO THE CUSTOM OF THE SAID MANOR, AN] heir of his body lawfully begotten, that is to say, one William Stephens him surviving, to wit, at, &c. aforesaid: And the said defendant further saith, that upon the death of the said John Stephens as aforesaid, the said last-mentioned William Stephens then and there, to wit, on the day and year last aforesaid, at, &c. as *youngest* [SUCH] son and heir of the body of the said John Stephens lawfully begotten, entered into and became and was seised of and in the said customary tenement, with the appurtenances as aforesaid in the said declaration mentioned, and in which, &c. in his demesne as of fee-tail, at the will of the lord, according, &c. and from thence hitherto hath been, and still is so seised thereof, to wit, at, &c. aforesaid: And so the said defendant further saith, that the said customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. long before and at the said time when, &c. in the said declaration mentioned, was and still is the customary tenement of the said last-mentioned William Stephens at the will of the lord, according, &c. to wit, at, &c. aforesaid, for which reason he the said Isaac, as the servant of the said last-mentioned William Stephens, and by his command, at the said time when, &c. in the said declaration mentioned, entered the said close called the Orchard in the said declaration mentioned, and in which, &c. as being the close of the said last-mentioned William Stephens, and parcel of his said customary tenement, with the appurtenances, and cut down, &c. and set up, &c. &c. as he lawfully might for the cause aforesaid, which, &c. &c. whereof, &c. without this, that before or at the time of committing, &c. in the said declaration mentioned, or at any time afterwards, the said plaintiffs were seised in their demesne as of fee at the will of the lord, according, &c. aforesaid, of and in the said customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. as the said plaintiffs have above in their said declaration in that behalf alledged; and this, &c. wherefore, if, &c. [3d Plea was exactly similar to the second, except only that the custom for the copyholds descending to the youngest son was not repeated, and that the words in small capitals, and included in crochets, which are not in the second plea, are introduced in the third, instead of those in Italic, which stand in the second plea, but are omitted in the third.] [4th, admitting as in the second and third pleas, and also that the said premises in the declaration mentioned, before and at the time of the committing of the said, &c.

in the said declaration mentioned, were a customary tenement of the manor aforesaid, demised and demiseable as the said plaintiffs have above in the said declaration in that behalf alledged; yet protesting that the said R. F. in the said declaration mentioned did not grant the said customary tenement, with the appurtenances, to the said M. and S. in manner and form as the said plaintiffs have above in their said declaration in that behalf alledged; yet for plea in this behalf the said defendant saith, that before and at the time of the committing, &c. in the said declaration mentioned, or at any time afterwards, the said plaintiffs were not seised in their demesne as of fee at the will, &c. of and in the said customary tenement, with the appurtenances, in the said declaration mentioned, and in which, &c. as the said plaintiffs have above in their said declaration in that behalf alledged; and of this, &c.] [5th plea admits the plaintiff's title and the tenancy of their lessee, and sets forth a licence from such lessee to the defendant, under which the defendant justifies the entry.] [6th is a justification of the entry, and the defendant thereby admits the grant to the plaintiffs;] yet for plea in this behalf the said defendant saith, that before the committing, &c. to wit, on, &c. at, &c. they the said plaintiffs demised the said customary tenement, with the appurtenances, in the said declaration mentioned, and in which, &c. unto one William Morris, to hold the same unto the said William Morris and his assigns from thence, to wit, from the day and year last aforesaid for and during, and unto the full end and term of one whole year from thence next ensuing and fully to be complete and ended, and after the end and expiration of the said term of one year as tenant thereof to the said plaintiffs from year to year for so long time as the said William Morris and his assigns and the said plaintiffs should please, by virtue of which said demise the said William Morris afterwards, and before the committing, &c. to wit, on, &c. at, &c. aforesaid, entered into and upon the said customary tenement, with the appurtenances, in the said declaration mentioned, and in which, &c. and became and was thereof possessed, and being so thereof possessed, he the said William Morris afterwards, and before the committing, &c. to wit, on, &c. at, &c. aforesaid, demised the said close called the Orchard, with the appurtenances, parcel of the said customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. to the said defendant, to hold the same unto the said defendant as tenant thereof to him the said W. M. from thenceforth for so long time as the said defendant and the said W. M. should please, by virtue of which said last-mentioned demise he the said defendant afterwards, to wit, on, &c. being the said time when, &c. to wit, at, &c. aforesaid, entered into and upon the said close called, &c. parcel, &c. and in which, &c. so demised to him as aforesaid, and as he lawfully might for the cause aforesaid, which is the same, &c. whereof, &c.; and this, &c.; wherefore, &c. if, &c.

Justification of the entry under a demise at will to the defendant by plaintiff's lessee from year to year.

C. RUNNINGTON.
LONDON,

Declaration, LONDON, to wit. Samuel Bevington complains of Edward Lowery the elder, esquire, being in the custody of the marshal of the marshalsea of our lord the king, before the king himself; for that whereas the said Samuel Bevington, on the first day of January 1771, and long before, was, and from thence hitherto hath been, and still is lawfully possessed of and entitled unto a certain messuage or dwelling-house, with the appurtenances, situate, standing, and being in Lombard Street, in the parish of Allhallows, in the ward of Langbourn, in London aforesaid, for the residue and remainder of a certain long term of years then and yet to come and unexpired, to wit, for the residue and remainder of a certain term of twenty years and three quarters of a year, commencing from and immediately after the twenty-fourth day of June, which was in the year of Our Lord 1756, which said messuage or dwelling-house, with the appurtenances, before the time of committing of the grievance hereafter next mentioned, was in the tenure or occupation of one Robert Wilson, as tenant thereof to the said Samuel Bevington, that is to say, as tenant at will thereof, and at and under a certain rent therefore payable by the said Robert Wilson to the said Samuel Bevington for the same, *to wit, a rent at the rate of a yearly rent of sixty-five pounds*, that is to say, at London aforesaid, in the parish and ward aforesaid: And whereas the said Edward Lowery heretofore, to wit, on the said first day of January, in the year 1771 aforesaid, and from thence until and at and after the committing of the grievance hereafter next mentioned, was the owner or proprietor of a certain piece of ground whereon a certain other messuage or dwelling-house had then lately stood, situate in London aforesaid, in the parish and ward aforesaid, contiguous and next adjoining to the said messuage or dwelling-house of the said Samuel Bevington, and which said two several messuages or dwelling-houses had been, whilst the said Samuel Bevington was so possessed of and entitled to his said messuage or dwelling-house, separated and divided from each other by a certain wall, called and being a partition or party-wall, to wit, at London aforesaid, in the parish and ward aforesaid: And whereas whilst the said Samuel Bevington was so possessed of and entitled to his said messuage or dwelling-house, and whilst the same so was in the tenure or occupation of the said Robert Wilson as tenant thereof to the said Samuel Bevington, and whilst the said Edward Lowery so was the owner or proprietor of his said ground, and whilst the said party-wall was standing, and before the committing of the grievance hereafter next mentioned, to wit, on the tenth day of December, in the year 1771 aforesaid, at London aforesaid, in the parish and ward aforesaid, he the said Edward Lowery, intending to build a house on his said ground contiguous to the said messuage or dwelling-house of the said Samuel Bevington, thought it necessary to pull down the party-wall, and to rebuild the same; and thereupon he the said Edward Lowery afterwards, to wit, on the day and year last

plaintiff and defendant being possessed of two houses contiguous to each other, the defendant wished to rebuild his, whereby he pulled down the party-wall which separated the two houses, by means whereof the plaintiff's house was laid open, and his tenant quitted; defendant did not rebuild the wall within a reasonable time, whereby the plaintiff lost the profit of his house.

last aforesaid, at London aforesaid, in the parish and ward aforesaid, according to the tenor and direction of the statutes in such case made and provided, gave "three months notice to the said R. W. the occupier of the said messuage or dwelling-house of the said Samuel Bevington," of his the said Edward Lowery's intention to have, and that the said party-wall might be surveyed according to the tenor and direction of the aforesaid statutes, to wit, for the purpose of pulling down and rebuilding the same, if the surveyors to be appointed for the surveying thereof should certify that the same ought to be pulled down and rebuilt: And whereas afterwards, to wit, on the tenth day of March, in the year of Our Lord 1771, at London aforesaid, in the parish and ward aforesaid, the said wall was surveyed by the surveyors duly appointed for that purpose according to the tenor and direction of the statutes aforesaid, who were to certify the state and condition thereof, and whether the same ought to be pulled down and rebuilt: And whereas the said surveyors, or the major part of them, did afterwards, and after having viewed the said wall for the purpose aforesaid, to wit, on the twenty-first day of March, in the year 1772 aforesaid, according to the tenor and direction of the said statutes, certify the state and condition of the said wall, and that the same ought to be pulled down and rebuilt: And whereas the said Edward Lowery, having conformed to the directions of the statutes aforesaid, and thereby obtained a power and authority to pull down the said wall and rebuild the same, he the said Edward Lowery did afterwards, to wit, on the first day of May, in the year 1772 aforesaid, at London aforesaid, in the parish and ward aforesaid, under and by virtue of the aforesaid statutes, prepare to pull down the said wall for the purpose of rebuilding the same; whereupon and for that the said messuage or dwelling-house of the said Samuel Bevington would be untenantable and not fit for habitation during the time the said party-wall should be pulling down, nor until the same should be rebuilt, the said Robert Wilson the tenant to the said Samuel Bevington of his said messuage or dwelling-house, afterwards, and just before the said party-wall was pulled down, to wit, on the fifteenth day of May, in the year of Our Lord 1772 aforesaid, quitted the said messuage or dwelling-house, and yielded up the possession thereof to the said Samuel Bevington, to wit, at London aforesaid, in the parish and ward aforesaid; whereupon he the said Edward Lowery afterwards, to wit, on the sixteenth day of May, in the year 1772 aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, did cause the said party-wall to be pulled down, that is to say, for the purpose of rebuilding the same, by means whereof the said messuage or dwelling-house of the said Samuel Bevington then and there became and was untenantable and unfit for habitation, and so continued until the said party-wall was rebuilt, to wit, at London aforesaid, in the parish and ward aforesaid: And whereas the said Edward Lowery, having so pulled down the said party-

the year of Our Lord 1756, which said last-mentioned messuage dwelling-house with the appurtenances, before and at the time the committing of the grievance hereafter mentioned, *was of a great yearly value*, to wit, of the yearly value of sixty-five pounds, wit, at London aforesaid, in the parish and ward aforesaid: And whereas before and at the time of the committing of the grievance hereafter mentioned, the said Edward Lowery was *in the intent and meaning of the statutes in such case made and provided*, the owner or proprietor of a certain other piece of ground whereon a certain other messuage or dwelling-house had already stood, situate in London aforesaid, in the parish and ward aforesaid, contiguous and next adjoining to the said messuage or dwelling-house of the said Samuel Bevington, and which said several messuages or dwelling-houses had been, whilst the said Samuel Bevington was so possessed of and entitled unto his said messuage or dwelling-house, separated and divided from each other by a certain wall called and being a partition or party-wall, to wit, at London aforesaid, in the parish and ward aforesaid: And whereas the said Edward Lowery, intending to build a house on his said ground contiguous to the messuage or dwelling-house of the said Samuel Bevington, whilst the said Samuel Bevington was so possessed of and entitled unto his said messuage or dwelling-house with the appurtenances, and whilst the said Edward Lowery was the owner or proprietor of his said piece of ground, and whilst the said party-wall was standing, and before the committing of the grievance hereafter next mentioned, to wit, on the sixteenth day of May, in the year 1772, at London aforesaid, in the parish and ward aforesaid, he the said Edward Lowery, being the owner and proprietor of his said piece of ground, and the said party-wall being standing, did, under and by virtue of the statutes in such case made and provided, and according to the tenor thereof, as such owner or proprietor of his said piece of ground (the state and condition of the said party-wall having been under and by virtue of the said statutes and according to the tenor thereof duly certified to be such as that the same ought to be pulled down and rebuilt), cause the said party-wall to be pulled down, that is to say, for the purpose of rebuilding the same, by means whereof the said messuage or dwelling-house of the said Samuel Bevington then and there became and was untenantable and unfit for habitation, and so continued until the said party-wall was rebuilt, to wit, at London aforesaid, in the parish and ward aforesaid: And whereas the said E. having so pulled down the said party-wall under and by virtue of the statutes aforesaid, for the purpose aforesaid, ought to have rebuilt the same within a reasonable time then next following; yet the said E. Lowery, well knowing the premises, but contriving, &c. &c. [as in the second Count to the end.] Damages three hundred pounds, &c.

J. MORGAN.

The defendant pleaded not guilty.

Trinity Term, 27. Geo. III.

STAFFORDSHIRE, to wit. William Roston and Joseph Lovall complain of Samuel Bamford, Elias Goodwin, John Hall, Edward Turner, Joseph Salt, and Joseph Howlett, being, &c.; for that whereas the said plaintiffs, on the first of January 1785, and long before were, and continually from thenceforth hitherto have been, and still are lawfully possessed of and in a certain close or field called Parsons Field, containing divers, to wit, twenty acres of land, and of divers, to wit, five ancient coal pits or collieries in the said close or field, situate, lying, and being at the parish of Dithome, in the said county of Stafford: And whereas the water from time to time arising and coming in and from the said coal pits or collieries, from time whereof the memory of man is not to the contrary, hath been used and accustomed to run and flow, and still of right ought to run and flow from the said coal pits or collieries in the said close or field unto, into, through, over, and past a certain close of the said defendants called the Rough Field, in a certain ancient gutter, flough, or drain, to wit, at the parish of Dithome aforesaid, in the said county: And whereas the said plaintiffs, and all other the tenants and occupiers of the said coal pits or collieries, with the appurtenances, for the time being, from time whereof, &c. until the time of the grievance hereinafter next mentioned, had and used, and were accustomed to have and use, and the said plaintiffs yet of right ought to have the use and benefit of the said gutter, flough, or drain, for the drawing, conveying, and carrying off and from the said coal pits or collieries the water arising and coming in and from the said coal pits or collieries, to wit, at the parish of Dithome aforesaid, in the said county: And whereas the water of a certain stream or rivulet called Godly Brook, otherwise Sweatly Brook, from time immemorial until the time hereinafter next mentioned, hath run and flowed, and been used and accustomed to run and flow, and still of right ought to run and flow in its ancient and usual course from Godly Wood, otherwise Sweatly Wood, in the parish of Dithome aforesaid, in the said county, down to and past a certain close of meadow called Old Gin Meadow, to wit, at the parish of Dithome aforesaid, in the said county: And whereas also the water of a certain other stream or water course called the Old Watercourse, from time immemorial until the time hereinafter next mentioned, hath run and flowed, and been used and accustomed to run and flow, and still of right ought to run and flow in its ancient and usual course from the said Godly Wood, otherwise Sweatly Wood, in the parish of Dithome aforesaid, in the said county, down to and past the said close called Rough Field, to wit, in the parish of Dithome aforesaid, in the said county; nevertheless the said defendant, well knowing the premises, but wrongfully, maliciously, and injuriously intending and devising to hurt, injure, prejudice, and damnify the said plaintiffs in this behalf, and spoil, ruin, and destroy the aforesaid coal pits or collieries, and to prevent and hinder them

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Declaration for digging a hole and throwing stones and rubbish into an ancient drain which ran along defendant's land, and carried the water from off plaintiff's land and coal pits, by which the water was pent up and driven back into the coal pits, and for turning the water of a rivulet out of its usual course into a certain canal, and thence into the said drain, from which it was forced and driven into the coal pits.

the said plaintiffs from working the same, and thereby to deprive them of all the benefit and advantage accruing and arising therefrom, afterwards, and whilst the said plaintiffs were so possessed of the said close or field of land called Parsons Close, and of the said coal pits or collieries therein as aforesaid, to wit, on the first of January 1785, at the parish of Dithome aforesaid, in the said county, maliciously, wrongfully, and injuriously dug and made, and caused and procured to be dug and made a certain pit or hole in and across the said gutter, slough, or drain, in the said close of the said defendants, and then and there kept and continued the said pit or hole so dug and made as aforesaid in and across the said gutter, slough, or drain, from the day and year last aforesaid until the day of the exhibiting of the bill of the said plaintiffs, and then and there wrongfully, maliciously, and injuriously put, laid, and placed divers large quantities of earth, stones, gravel, and rubbish, in and across the said gutter, slough, or drain in the said close of them the said defendants, and then and there kept and continued the said earth, stones, gravel, and rubbish in and across the said gutter, slough, and drain from the day and year last aforesaid until the day of the exhibiting of the bill of the said plaintiffs, whereby and by reason whereof divers large quantities of water, from time to time arising and coming in and from the said coal pits or collieries during the time last aforesaid, which ought to have run and flowed from the said coal pits or collieries into and through the said gutter, slough, or drain down to, over, and past the said close of the said defendant, was then and there prevented and stopped from running into, through, and along the said gutter, slough, or drain down to, over, and past the said pit or hole so dug and made as aforesaid, and was then and there, by reason thereof, pent up, and forced and driven back into the said coal pits or collieries, and the said coal pits or collieries were thereby then and there filled up, choked up, damaged, injured, and destroyed, and also afterwards, to wit, on the same first of January 1785, and on divers other days and times between that day and the day of exhibiting of the bill of the said plaintiffs, maliciously, wrongfully, and injuriously diverted and turned, and caused and procured to be diverted and turned divers large quantities of water from and out of the said stream or rivulet called Godly Brook, otherwise Sweaty Brook, from and out of the ancient or usual course of the same unto and into a certain navigation or canal near to and adjoining to the said gutter, slough, or drain, and so from thence into the said gutter, slough, or drain, whereby the said water, so wrongfully and injuriously diverted and turned as last aforesaid, was diverted and turned into the said gutter, slough, or drain, and forced up and driven up the same unto and into the said close or field called Parsons Field, and unto and into the said coal pits or collieries, and the said coal pits or collieries thereby then and there filled up, choked up, damaged, injured, and destroyed, and also then and there, to wit, on the same first

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the

of January 1785, and on divers other days and times between that day and the day of the exhibiting of the bill of the said plaintiffs, maliciously, wrongfully, and injuriously diverted and turned divers other large quantities of water from the said stream or water course called the Old Watercourse, and from and out of the usual and ordinary course of the same unto and into the said gutter, slough, or drain, whereby and by reason whereof the said water so wrongfully and injuriously diverted and turned as last aforesaid, was diverted and turned into the said gutter, slough, or drain, and was thereby forced and driven up the same unto and into the said close or field called Parsons Field, and unto and into the said coal pits or collieries, by reason and means of all which said premises the said coal pits or collieries were thereby then and there filled up, choaked up, damaged, injured, and destroyed, and the said plaintiffs during all the time aforesaid were prevented and hindered, and still are prevented and hindered from working in the said coal pits or collieries, or any or either of them, and from getting any coal from any or either of them, and have thereby lost and been deprived of great gains, profits, and advantages, which they would otherwise have received and obtained from the working of the said coal pits or collieries, and have otherwise been greatly injured, prejudiced, and damnified by reason of the premises aforesaid, to wit, at the parish of D. aforesaid, in the said county:

ad Count, turning the water of the rivulet, &c.

And whereas also the said plaintiffs afterwards, to wit, on the said first of January 1785, and long before, were, and continually from thenceforth hitherto have been, and still are lawfully possessed of and in a certain other close or field called Parsons Field, containing divers, to wit, twenty acres of land, and of and in divers, to wit, five other ancient coal pits or collieries in the said last-mentioned close or field, situate, lying, and being in the parish of Dithome aforesaid, in the said county: And whereas the said defendants, during the time last aforesaid, were, and still are possessed of a certain other close called the Rough Field, next and adjoining to the said last-mentioned field called Parsons Field, and near to the said last-mentioned coal pits or collieries, to wit, at the parish of Dithome aforesaid, in the said county: And whereas the water of a certain other stream or water course called the Old Watercourse, from time immemorial until the times hereinafter mentioned, hath run and flowed, and been used and accustomed to run and flow, and still of right ought to run and flow in its ancient and usual course from Godly Brook, otherwise Sweaty Brook, in the parish of Dithome aforesaid, in the said county, to, by, and past the said last-mentioned close called Rough Field, to wit, at the parish of Dithome aforesaid, in the said county; yet the said defendants, well knowing the premises last aforesaid, but wrongfully, injuriously, and maliciously intending and devising to hurt, injure, prejudice, and damnify the said plaintiffs in this behalf, and spoil, ruin, and destroy the said last-mentioned coal pits or collieries, and to prevent and hinder them

the said plaintiffs from working the same, and thereby to deprive them of all the benefit and advantage accruing and arising therefrom, afterwards, and whilst the said plaintiffs were so possessed of the said last-mentioned close or field of land called Parsons Field, and of the said last-mentioned coal pits or collieries therein as last aforesaid, to wit, on the first of January 1785, at the parish of Dithome aforesaid, in the said county, maliciously, wrongfully, and injuriously dug and made, and caused and procured to be dug and made a certain cut or canal, extending from the said stream or water course called the Old Watercouse into the said last-mentioned field called the Rough Field, and nearer to the said last-mentioned coal pits or collieries than the said last-mentioned stream or water course, and at the end of the said last-mentioned cut or canal, maliciously, wrongfully, and injuriously dug and made, and caused and procured to be dug and made a certain pit or hole, and by reason and means of the said cut or canal, and pit or hole, maliciously, wrongfully, and injuriously diverted and turned the water of the said last-mentioned stream or water course into the said cut or canal and pit or hole, and then and there wrongfully and injuriously kept and continued the said last-mentioned cut or canal and pit or hole so dug and made as last aforesaid continually from thenceforth hitherto, whereby and by means whereof the water of the said last-mentioned stream or water course, during all the time last aforesaid, was diverted and turned into the said cut or canal and pit or hole, and the said water so diverted and turned as last aforesaid, during all the time last aforesaid, oozed, penetrated, and flowed from thence into and unto the said last-mentioned coal pits or collieries; by reason and means whereof the said last-mentioned coal pits or collieries were thereby, and by the aforesaid water being so wrongfully and injuriously diverted and turned, and continued so then and there filled up, choaked up, damaged, injured, and destroyed, and the said plaintiffs, during all the time last aforesaid, were prevented and hindered, and still are prevented and hindered from working in the said last-mentioned coal pits or collieries, or any or either of them, and from getting any coal from them, or any or either of them, and have thereby lost and been deprived of divers great gains, profits, and advantages which they otherwise would have received and obtained from working the said last-mentioned coal pits or collieries, and have otherwise been greatly injured, prejudiced, and damnified by reason of the premises last aforesaid, to wit, at the parish of Dithome aforesaid, in the said county; of the damage of the said plaintiffs of two thousand pounds; and therefore, &c. Pledges, &c.

Drawn by Mr. I. GRAHAM.

Declaration at
suit of sugar ba-
kers for setting
casks in a kennel
which ran be-
tween plaintiffs
and defendant's
houses, thereby
preventing the
water from run-
ning into the
common sewer,
in consequence
of which it came
in at the win-
dows of plain-
tiff's fill-house,
and spoiled their
sugars.

MIDDLESEX, to wit. John Christian Sulving and John Henry Sulving complain of Frederic Ryder, being, &c.; for that whereas the said J. C. and J. H. long before, and at the time of the committing the grievance hereafter next mentioned, were, and from thence hitherto have been, and still are sugar-bakers, and the business of sugar-bakers during all the time aforesaid did use, exercise, and follow, and still doth use, exercise, and follow as partners and joint dealers together in the way of their said business, to wit, at and in the parish of Saint Mary Matfellow, otherwise Whitechapel, in the county of Middlesex aforesaid: And whereas the said J. C. and J. H. during all the time aforesaid were, and still are lawfully possessed of and in a certain building commonly called a sugar-house, with the appurtenances, situate and being in the parish aforesaid, in the county aforesaid, for the carrying on therein of their business of sugar-bakers aforesaid, to wit, at the parish, &c. aforesaid: And whereas the said plaintiffs, before and at the time of the committing of the grievance hereafter mentioned, were lawfully possessed of a large quantity, to wit, five thousand pounds weight of sugar, of a large value, to wit, of the value of five hundred pounds of lawful, &c. which before and at the time of committing the grievance hereafter mentioned was in the said building commonly called a sugar-house of the said J. C. and J. H. that is to say, in a certain place, part thereof, called the fill house, the same being under and below the surface of the ground, to wit, at, &c. aforesaid: And whereas before and at the time of the committing of the grievance hereafter next mentioned and afterwards, the said F. was possessed of a certain other building commonly called a sugar-house, situate opposite and near to the said building called a sugar-house of the said J. C. and J. H. that is to say, at, &c. aforesaid: And whereas during all the time aforesaid there hath been, and still is a certain water course, which during all that time hath been used and accustomed to run and flow, and still doth run and flow from a certain place called Winford Street, in the parish aforesaid, by and near to and along the side of the said building called a sugar-house of the said J. C. and J. H. and between the same and the said building called a sugar-house of the said F. unto and into a certain common sewer in a certain other street called Whitechapel High-street, to wit, at the parish aforesaid, in the county aforesaid: And whereas during all that time aforesaid the water of the said water course of right ought to have run and flowed, and still of right ought to run and flow free from any obstruction by any person or persons whomsoever, and by any means whatsoever, to wit, at, &c. aforesaid; yet the said F. well knowing the premises, but contriving, &c. wrongfully and unjustly to injure the said J. C. and J. H. and to cause the said water course to be obstructed, stopped up, and to overflow, and run into the said sugar-house of the said J. C. and J. H. to wit, into that part thereof called the fill house, and thereby to dissolve, wet, injure, damage, and wholly

wholly spoil the said sugar of the said J. C. and J. H. called the fill house, he the said F. whilst the said J. C. and J. H. were so possessed of their said sugar-house and of their said sugar, and whilst the said sugar so was on the said part of the said sugar-house of the said J. C. and J. H. called the fill house, and whilst the said F. was so possessed of his said sugar-house, and whilst a large quantity of water was running and flowing down the said water course from the said place called Winford Street, in the, &c. to the said common sewer in the said place called Whitechapel High-street, to wit, on the twentieth day of August, A. D. 1770, at the, &c. in the, &c. wrongfully and unjustly put and placed, and caused, &c. divers vessels, to wit, eight vessels commonly called sugar hogheads, in, over, and across a part of the said water course, to wit, the side or part thereof next to the said sugar-house of the said F. and wrongfully and unjustly kept and continued, and caused to be kept and continued the same so there put and placed for a long time, to wit, &c. whereby divers large quantities of dirt, straw, manure, rubbish, earth, and gravel, and other things, running, swimming, and floating in the water, and carried down the said water course by the current of the said water, lodged, stopped, and rested against, and were obstructed by the said vessels, by means whereof the water of the said water course could not then and there run or flow into the said common sewer, but was thereby stopped up, dammed up, and obstructed from running or flowing into the same, and did then and there, on occasion thereof, rise to a much greater height, to wit, to the height of two feet higher than it otherwise would have done, and having so risen then and there by means of the premises aforesaid for want of a free course in the usual course thereof, by reason of the obstruction aforesaid, then and there run and overflowed in great quantities from and out of the said water course through certain windows of the said J. C. and J. H. then being in that part of their said sugar-house called the fill house unto and into the said fill house of the said J. C. and J. H. and over and upon the said sugar of the said J. C. and J. H. there then being as aforesaid, and being of the value aforesaid, and thereby then and there greatly dissolved, wetted, injured, damaged, and wholly spoiled the same, to wit, &c. aforesaid.

C. RUNNINGTON.

FOR that whereas the said plaintiff heretofore, to wit, on, &c. Declaration for was, and from thence hitherto hath been, and still is lawfully cutting a water- possessed of and in a certain messuage or dwelling-house and yard pipe which conveyed water to thereto adjoining, with the appurtenances, situate and being at, plaintiff's house, &c. in which said messuage or dwelling-house the said plaintiff whereby plaintiff and his family, during all the time aforesaid, inhabited and dwelt: tiff was deprived of water, and And whereas long before and at the time of the committing of the put to great trouble and expence in procuring water for his necessary use.

grievance hereafter next-mentioned, there was a certain wooden pipe, and being under ground near to the said messuage of him the said plaintiff, by and through the means of which said pipe, and of a certain leaden pipe, fastened in and affixed to the same, and extending and coming from the aforesaid wooden pipe unto and into the aforesaid yard of the said plaintiff, and the said plaintiff and all others of the occupiers and possessors of the said messuage, &c. were during all the time aforesaid, used and accustomed to be and were supplied, and still ought to be supplied with water to be used, spent, and employed by the occupiers and possessors of the said messuage, &c. with the appurtenances respectively; yet the said defendant, well knowing the premises aforesaid, but contriving and maliciously intending wrongfully and unjustly to hurt, injure, and prejudice the said plaintiff, and to deprive him of water for the necessary use of the said plaintiff and his family residing in the said messuage, &c. whilst the said plaintiff was so possessed of the said messuage, &c. to wit, on, &c. at, &c. wrongfully and unjustly, injuriously and maliciously, cut into and through the aforesaid wooden pipe, and separated and divided the same, and caused and procured the said wooden pipe to be cut into and through and separated and divided, and wrongfully and injuriously kept and continued the said pipe so cut into and through, and separated and divided, for a long space of time, to wit, for the space of twelve months then next following; whereby he the said plaintiff was for a long space of time, to wit, for and during all the time aforesaid, wholly deprived of water to be used, spent, and employed by him the said plaintiff and his family in the said messuage, &c. of him the said plaintiff, and was thereby, during all the time, put to great trouble and inconvenience, and was forced and obliged to, and did lay out and expend divers sums of money, to wit, in the whole amounting to a large sum of money, to wit, the sum of twenty pounds, in and about the furnishing and supplying of water for the necessary use and purposes of him the said plaintiff and his family in his said messuage or, &c.; and he the said plaintiff was, hath been, and is, on occasion of the committing of the grievance aforesaid, otherwise greatly injured and damnified, to wit, at, &c. aforesaid.

V. LAWES.

Declaration against defendant for letting down and continuing sluices and weirs, thereby diverting the stream, over flowing plain-lands, spoiling the grass and hedges, and drowning his sheep.

SOMERSETSHIRE, to wit. John Binden complains of John Stevens, being, &c. in a plea of trespass on the case; for that whereas the said J. B. heretofore, to wit, on the first of January, in the year 178, and long before was, and from thence hitherto hath been, and still is lawfully possessed of and in a certain close or piece of land called the Lower Moore, with the appurtenances, situate, lying, and being within the parish of Bunnington, in the county of Somerset, and near and in part adjoining to a certain river or water course called the River Tone, and running therein in the several parishes of Wellington and Minhead Flores, in

in the said county of Somerset; yet the said J. S. well knowing the premises, but contriving, &c. to injure and prejudice the said J. B. and to damage, spoil, and destroy his aforesaid land, and the grass and other produce thereof, and to deprive him of the profit of the same, heretofore, and whilst he was so thereof possessed, to wit, on the said first day of Jannary, A. D. 1788 aforesaid, at the parish of , in the said county of Somerset, wrongfully and unjustly erected and set up, put down, let down, laid, and placed, and caused and procured to be erected, set up, put down, let down, laid, and placed in, over, and across the said river or water course, at a certain part thereof near to the said land of the said J. B. certain sluices, dams, wears, and boards, to wit, sluices, dams, wears, and boards, and certain large quantities of stower, mud, earth, and rubbish, to wit, fifty cart loads of stower, fifty cart loads of mud, fifty cart loads of earth, and fifty cart loads of rubbish, and wrongfully and unjustly kept and continued the same so there respectively erected, set up, put down, let down, laid, and placed, for a long time, to wit, continually from thenceforth hitherto, and thereby, during all that time injuriously obstructed and diverted the usual and proper course of the water of the said river or water course, whereby divers large quantities of the said water, on the day and year aforesaid, and on divers other days and times between that day and the day of the commencement of this suit, ran and flowed out and from the said river or water course, and out of the usual and proper course and channel, thereunto and upon the said land of the said J. B. and thereby overflowed the same, and thereby rotted, spoiled, damaged, washed away, and destroyed the grass and herbage of the said J. B. there then growing in and upon the said land, of great value, to wit, of the value of one hundred pounds, and also undermined, washed away, and destroyed the hedges, fences, and soil, to wit, two hundred perches of hedges, one hundred perches of fences, and one hundred perches of soil of the said J. B. in and of his said land, and the said J. B. during all that time, not only thereby lost the greatest part of the use, profit, benefit, and advantage of the said land, but by reason of the violence of the said floodings and overflowings of the said waters of the said river, or the water course in manner and by means aforesaid, divers cattle, to wit, twenty sheep and twenty lambs of the said J. B. were forced away, washed away, carried away, drowned, and lost to him the said J. B. and many others were hindered and prevented from feeding and depasturing in the same land, to wit, at the parish, &c. aforesaid, in the, &c. aforesaid: And whereas the said J. B. heretofore, to wit, on the day of January, A. D. 1788, and long before 2d Count. was, and from thence hitherto hath been, and still is, lawfully possessed of and in a certain other close or piece of land called the Lower Moore, with the appurtenances, situate, lying, and being within the said parish of Runnington, in the said county of Somerset, and near to a certain other river or water course called the River

River Tone, in the said county of Somerset; yet the said J. S. well knowing the premises last aforesaid, but contriving, &c. to injure and prejudice the said John Binden, and to damage, spoil, and destroy his said last-mentioned land, and the grass and other produce thereof, and to deprive him of the profits of the same land, to wit, on the said first day of January, in the year 1788 aforesaid, and from thence for a long space of time, to wit, from thence hitherto, that is to say, at the said parish of in the said, &c. wrongfully and unjustly *|| kept and continued, and caused and procured to be kept and continued there erected, set up, put down, laid down, and placed, in, over, and across the said last-mentioned river or water course, at a certain part thereof near to the said last-mentioned land of the said J. B. certain other sluices, dams, wears, and boards, to wit, other sluices, other dams, other wears, and other boards, and certain other large quantities of flower, mud, earth, and rubbish, to wit, fifty cart loads of flower, fifty cart loads of earth, and fifty cart loads of rubbish, before then there wrongfully and unjustly erected, set up, put down, let down, set down, laid and placed, and thereby, during all that time, wrongfully and injuriously obstructed and diverted the usual and proper course of the water of the said last-mentioned river or water course, whereby divers large quantities of the said water, on the day and year last aforesaid, and on divers other days and times between that day and the commencement of this suit, ran and overflowed out of and from the said last-mentioned river or water course, and out of his usual and proper course and channel thereunto and upon the said last-mentioned land of the said J. B. and thereby then and there overflowed the same, and thereby rotted, spoiled, &c. and destroyed the grass and herbage of the said J. B. there then growing in and upon the said last-mentioned land, of great value, to wit, of the value of one hundred pounds \pm and also undermined, washed away, and destroyed the hedges, fences, and soil, to wit, one hundred perches of the hedges, one hundred perches of the fences, and one hundred perches of the soil of the said J. B. in and of his said last-mentioned land; and the said J. B. not only thereby lost the greatest part of the use, profit, benefit, and advantage of the said last-mentioned land, during all the time last aforesaid, lost by reason of the violence of the said floodings of the said last-mentioned river or water course, in manner and by the means aforesaid, divers cattle, to wit, twenty sheep and twenty lambs of the said J. B. were forced away, washed away, carried away, drowned, and lost to him the said J. B. and many others were hindered and prevented from feeding and depasturing in the said last-mentioned land, to wit, at the, &c. aforesaid, in the, &c. aforesaid: And whereas the said J. B. &c. &c. [as in the second Count, omitting the words “or water course” as far as this mark \parallel , then say]; wrongfully and unjustly erected, set up, and let down, and caused and procured to be erected, set up, and let down, in, over, and across the said last-mentioned river, at a certain part thereof near to the said land of the said J. B. a certain stone sluice or wear, and wrongfully*

3d Count.

fully and unjustly kept and continued the same so there erected, set up, and let down, for a long time, to wit, from thence hitherto, and thereby, during all that time, wrongfully and injuriously obstructed and diverted the usual and proper course, &c. &c. [as in the second Count to this mark †], and the said J. B. not only lost the greatest part of the use, profit, benefit, and advantage of the said last-mentioned land during all the time last aforesaid, but by reason of the floodings and overflowings of the said waters of the said last-mentioned river, in manner and by the means aforesaid, divers cattle, to wit, twenty sheep and twenty lambs of the said J. B. feeding and depasturing in the said last-mentioned land, were drowned and lost to him the said J. B. and many others were hindered and prevented from feeding and depasturing in the same, to wit, at the said parish, &c. in the county, &c. to the damage of the said J. B. of one hundred pounds; and therefore he brings suit, &c.

The instructions for this declaration are rather too general, particularly in not stating specifically the nature of the obstructions. It is to be sure stated that the defendant obstructed by sluices, but that is not sufficient; it should be shewn

particularly whether by sluices, drains, or the like, and which of them, and how many, and in what parish they were set up, as the obstruction is of a local nature.

V. LAWES.

MIDDLESEX, to wit. John Brind, late of Shoreditch, in Declaration by the county of M. victualler, Thomas Brind, late of the same assignee of a place, dyer, Richard Folley, late of, &c. aforesaid, weaver, and Thomas Mason, late of Spital-fields, in the said county of Middlesex, victualler, were attached to answer Richard Garret of a plea of trespass upon the case, &c.; and thereupon the said Richard, by A. B. his attorney, complains, that whereas long before and at the time of the committing of the grievance hereafter next mentioned, he the said plaintiff was fully possessed of and in, and entitled unto a certain messuage or dwelling, with the appurtenances, situate and being in the parish of St. Leonard, Shoreditch, in the said county of Middlesex, for the residue of a certain long term of years then to come and unexpired, to wit, a term of twenty-one years, commencing from the feast of St. John the Baptist, A. D. 1770, by indenture bearing date the twenty-sixth day of June, A. D. 1770, and made or mentioned to be made between John March, by the name of, &c. of the one part, and George Gillin, by the name of, &c. of the other part, demised by the said John March to the said George Gillin, to hold to him, his executors, administrators, and assigns, for the term aforesaid, which is not yet expired, and which said messuage or dwelling-house, with the appurtenances, was afterwards and before the committing, &c. hereafter mentioned, to wit, on the seventh day of February, in the year 1771, by deed poll indorsed on the said indenture of lease, and duly executed by the said G. G. assigned by him the said G. G. to him the said plaintiff, to hold to him the said plaintiff and his assigns

assigns for all the residue and remainder of the aforesaid term then to come and unexpired: And whereas the said J. B. heretofore, and whilst the said plaintiff was so possessed of and entitled unto the said messuage or dwelling-house, with the appurtenances, for the term aforesaid, to wit, on the said, &c. and long before, and from thence for a long time, to wit, until, at, and after the time of the committing, &c. hereafter mentioned, at the said, &c. was the actual occupier of the said messuage or dwelling-house, with the appurtenances, and during all that time there held the same of the said plaintiff as his tenant thereof, at and under a certain yearly rent therefore payable by the said John to the said plaintiff for the same, to wit, at, &c.; yet the said defendants, contriving, &c. to hurt and injure the said plaintiff in his estate and interest of and in his said messuage or dwelling-house, with the appurtenances, during the time that the said John so was the occupier of the said messuage or dwelling-house, with the appurtenances, as tenant thereof to the said plaintiff, and whilst he the said plaintiff was so possessed of and entitled to the same for the residue of the term aforesaid, to wit, on the twenty-ninth day of September, A. D. 1773, at the said, &c. they the said defendants wrongfully and unjustly broke down, &c. a certain partition composed of divers materials, to wit, timber wood and wainscot, being in and parcel of the said messuage or dwelling-house and affixed to the freehold thereof, and also broke to pieces, &c. certain pannels, to wit, twenty wainscot pannels in and belonging to the said messuage or dwelling-house and affixed to the freehold thereof, and broke to pieces, &c. *one iron grate, one crane, one coal drawer*, forty squares of glass windows, &c. of, in, and belonging to the said messuage or dwelling-house and affixed to the freehold thereof, *and took and carried away the materials, to wit, twenty cart loads of timber, ten cart loads of wood of the said plaintiff thereof coming, of a large value, to wit, of the value of twenty pounds, and converted and disposed thereof to his own use*; whereby the said plaintiff was and is greatly injured and damnified in his estate and interest of and in his said messuage or dwelling house, with the appurtenances, to wit, at the said, &c. : And whereas long before and at the time of the committing, &c. hereafter next-mentioned, he the said plaintiff was, [as in the first Count to the gravamen], to wit, on the said, &c. they the said defendants wrongfully and unjustly broke down, &c. a certain partition composed of divers materials, to wit, timber, &c. being in and parcel of the said messuage or dwelling-house and affixed to the freehold thereof, and also certain pannels, to wit, twenty-wainscot pannels, in and belonging to the said messuage or dwelling-house and affixed to the freehold thereof, and pulled down, &c. divers, to wit, forty squares of glass, &c. in and belonging to the windows of the said messuage or dwelling-house, and also the lead work of divers windows, to wit, twenty windows in and belonging to the said house, and one wood gutter, &c. being in and belonging to and part and parcel of the said messuage or dwelling-house and affixed to the freehold thereof; whereby the said plaintiff was and is greatly injured and damnified

ed Count.

damnified in his estate and interest of and in his said last-mentioned messuage or dwelling-house, with the appurtenances, to wit, at, &c. aforesaid; wherefore the said plaintiff saith he is injured, and hath sustained damage to the value of forty pounds; and therefore he brings suit, &c.

J. MORGAN.

Common Pleas, Hilary Term, 16. Geo. III.

LONDON, to wit, Joseph Spackman, late of London, Declaration for a
 pewterer, was attached to answer unto Edmund Turner in a plea tort.
 of, &c. and thereupon, &c.; for that whereas he the said plaintiff 1st Count, for
 heretofore, to wit, on the first day of January, A. D. 1775, was, obstructing a
 and from thenceforth hitherto hath been, and still is seised in his door way from
 demesne as of fee of and in a certain messuage or dwelling house, whilst in the
 with the appurtenances, situate, standing, and being in London possession of his
 aforesaid, to wit, at the parish of St. Catherine Creechurch, in tenant by an
 the ward of Aldgate, which said messuage or dwelling-house, erection.
 with the appurtenances, is, and during all the time aforesaid hath
 been in the tenure and occupation of Moses Alvarez, as tenant
 thereof to the said plaintiff: And whereas the said defendant, before
 and at the time of the committing the grievance hereafter next-
 mentioned, was, and from thence hitherto hath been, and still is
 possessed of and in a certain close or piece of ground, with the ap-
 purtenances, situate, lying, and being at L. aforesaid, in the
 parish, &c. aforesaid, contiguous and next adjoining to the said
 messuage or dwelling-house of the said plaintiff: And whereas
 long before and at the time of the committing of the grievance
 hereafter mentioned there was a certain door way, then and there
 being in and belonging to the said messuage, &c. of the said plain-
 tiff, and appendant and appurtenant thereto, leading out of the
 said messuage or, &c. of the said plaintiff into the said close or
 piece of ground, and which door way ought not to have been
 stopped up or obstructed by any building, erection, or obstruc-
 tion, on the outside thereof erected or set up on the said close or
 piece of ground, and which said door way hath been accustomed
 to be open, and still of right ought to be opened for a pas-
 sage from the said messuage or, &c. of the said plaintiff in-
 to the said close or, &c. of the said defendant, to wit, at,
 &c. aforesaid; yet the said defendant, well knowing the premises,
 but contriving and maliciously intending wrongfully and unjustly
 to injure the said plaintiff in his hereditary estate of and in the said
 messuage, &c. with the appurtenances, so being in the tenure of
 the said Moses Alvarez, † whilst the said plaintiff was so seised of
 and in the said messuage or, &c. and whilst the said messuage or,
 &c. was in the tenure of the said M. A. to wit, on the said first
 of 1775, at, &c. aforesaid, wrongfully, unlawfully, and unjustly,
 and without the leave or licence, and against the will of the said
 plaintiff, built and erected, and caused and procured to be built and
 erected, a certain edifice or building on and upon the said close,
 &c. of the said defendant, ‡ near a close adjoining unto and
 against the said door way in the said dwelling-house of the said
 plaintiff,

1st Count, for
obstructing win-
dows and case-
ments.

Vide Salk. 459.

plaintiff, and hath kept and continued the same so there built, &c. for a long space of time, to wit, from thence hitherto, and thereby and therewith, during all that time, stopped up and obstructed the said door-way, by means whereof the said door-way was, during all the time aforesaid, and still is rendered wholly useless, to the great damage and injury of the said plaintiff of and in his hereditary estate of and in his said messuage or, &c. in the possession of the said M. A. as tenant thereof to him the said plaintiff; and the said plaintiff, by means of the premises aforesaid, hath been and is otherwise greatly injured and damnified in his estate aforesaid, to wit, at, &c. aforesaid: And whereas the said plaintiff heretofore, to wit, on, &c. [state plaintiff's being seised of an *ancient* house, &c. as in the first Count, and premises being in the possession of plaintiffs tenants], in which said last-mentioned messuage or, &c. on the south side or part thereof there now are, and during all the time aforesaid have been, and still of right ought to be certain *ancient* windows or lights belonging to the same, to wit, two *ancient* windows or lights, or, &c. in and through which said windows or, &c. the light and air during all the time aforesaid, until the obstruction thereof hereinafter mentioned, were used and accustomed to come and enter into the said last-mentioned messuage or dwelling-house for the airing and enlightening the said last-mentioned messuage or, &c. of the said plaintiff, and to the convenient use and enjoyment of the same by himself and his tenants, and the casements of which windows, during all the time aforesaid, until the obstruction thereof hereafter mentioned, were used and accustomed to open, and still of right ought to open outwards from the said messuage or, &c. over the said close or scite of ground without any hinderance, stoppage, or obstruction whatsoever, to wit, at, &c.: And whereas, &c. [state defendant to be possessed of the close as in the first Count, with this addition at the end, "being the close or piece of ground before-mentioned"]; yet, &c. [as in the first Count to this mark †, then go on as follows]; and to obstruct, hinder, and prevent the light and air from coming and entering through the said windows or lights into the said last-mentioned messuage or, &c. of the said plaintiff, and to stop and obstruct the said casements of the said windows from opening freely and to the full extent they were used and accustomed to open, and still of right ought to open, whilst the said plaintiff was so seised of and in his said last-mentioned messuage or, &c. with the appurtenances, and whilst the said messuage or, &c. was in the tenure and occupation of the said M. A. as tenant thereof to the said plaintiff, to wit, on the first day of May, A. D. 1775, at, &c. aforesaid, wrongfully, &c. and without the leave, &c. and against, &c. built, &c. and caused, &c. to be built, &c. in and upon the said close or, &c. a certain edifice or, &c. near to the said windows of, &c. and against the said messuage or, &c. of him the said plaintiff, and kept, &c. said edifice, or, &c. there so built, and for a long space of time, to wit, from, &c. and thereby, during all that time, obstructed and prevented the

the light and air from coming and entering through the said windows or, &c. unto the said last-mentioned messuage or, &c. in so free and ample a manner as the same was used and accustomed to do, and still of right ought to do, and thereby also prevented the said casements of the windows aforesaid from opening as the same, during all that time, ought to have done, and would otherwise have done, and still of right ought to do, and by reason thereof the said last-mentioned messuage or, &c. of the said plaintiff was, during all that time, greatly and wrongfully darkened, to the great damage, &c. [as in the first Count]: And whereas, &c. [state the plaintiff to be possessed of a house and it being in the possession of M. A. as in the first Count, then proceed as follows]: And whereas long before and at the time of, &c. there was and still is a certain drain or water-course belonging and appertaining to the said last-mentioned messuage or, &c. of the said plaintiff, for the purpose of carrying off and conveying from the said last-mentioned messuage or, &c. of the said plaintiff the rain and other water from time to time falling on and being in the said messuage or, &c. into and through a certain close or piece of ground hereafter mentioned, into a certain street or king's common highway there called Jewry-street, to wit, at, &c. aforesaid: And whereas before and at, &c. [state defendant to be possessed of a close, &c. as in second Count]; yet, &c. [as in the first Count to this mark ||, then proceed as follows]; upon and over the said drain or, &c. and kept and continued the same so then built, &c. for a long space of time, to wit, from, &c. † and thereby and therewith, during all that time, hindered, prevented, and obstructed the said plaintiff and his tenants from cleansing, scouring, and amending the same, which then and there became choaked up, stopped up, and obstructed, and continued so choaked up, &c. for a long space of time, to wit, for and during all the time aforesaid; by means whereof the rain and other water falling on and being, and coming from the said last-mentioned messuage or, &c. unto the said drain or, &c. afterwards, to wit, on the first of August, in the year aforesaid, and on divers other days and times between that day and the day of suing forth the original writ of the said plaintiff against the said defendant, for want of a free passage through the said drain or, &c. ran back out of the said drain, or, &c. and then and there ran and sunk into the said last-mentioned messuage or, &c. of the said plaintiff so in the possession of the said M. A. as tenant thereof to the said plaintiff as aforesaid, and greatly wetted the same, and by means thereof the foundation of the said last-mentioned messuage or, &c. was and is greatly wetted, rotted, mouldered away, and damaged, to the great damage, &c. [as in the first Count]: And whereas, [every thing as in the third Count till you come to this mark †, then proceed as follows]; and by means of the said erection or building the said plaintiff and his tenant aforesaid now are, and the said plaintiff and his tenants hereafter, for the time being, during all such time as the said edifice or building shall continue, will be prevented from cleansing, scouring, and amending the said drain or, &c. whenever occasion
hath

3d Count, building over a water-course, whereby plaintiff and his tenant are hindered from cleansing, &c. and the premises became overflowed.

hath required or may require, to the great damage [as before];
wherefore, &c.; damages, &c.; suit, &c. J. MORGAN.

B. R. Michaelmas Term, 19. Geo. III.

Declaration for
erecting a tumb-
ling bay above
the usual height,
and thereby
impeding the
working of the
plaintiff's mills.

SURRY, to wit. James Henchel, the younger, complains of
—— Shipley, being in the custody, &c.; for that whereas the said
plaintiff heretofore, to wit, on the first day of September, A. D.
1777, was, and from thence hitherto hath been, and still is law-
fully possessed of and in a certain set of ancient water-mills, to
wit, two water-mills, commonly called and known by the name
of Atkyn's Mills, situate over and upon a certain ancient river
called the river Wandle, to wit, at the parish of —, in the
said county of Surry: And whereas during all the time aforesaid
the water of the said river Wandle of right ought to have run
and flowed, and still of right ought to run and flow from the said
mills of the said plaintiff through divers lands in the parish aforesaid
unto and into the river Thames, to wit, at the parish aforesaid:
And whereas the said plaintiff, by reason of his said possession
of the said mills during all the time aforesaid, of right out to have
had, and still of right ought to have the free current, course, use,
and benefit of the said water running and flowing down the said
water course unto his said mills, and the free course and currency
of the said water through and from his said mills down to the said
river Thames for the working of his said mills, to wit, at the parish
aforesaid: And whereas the said defendant before and during all the
time aforesaid was, and still is possessed of and in a certain other
mill, situate over and upon the said river Wandle, that is to say,
below the said mills of the said plaintiff, to wit, at the parish aforesaid:
And whereas the water of the aforesaid Wandle from time to
time, during all the time aforesaid, running and flowing from the
said mills of the said plaintiff in and along the ancient channel
thereof towards the river Thames aforesaid, when and so often as
the same hath arrived at the said mill, and hath arisen and been at
a certain height, to wit, the height of — feet and — inches from
the bed of the said river Wandle, hath, until the obstruction and
stoppage thereof hereafter mentioned, been used and accustomed to
run and flow, and for and during all the time aforesaid of right
ought to run and flow from and out of the river Wandle over a
tumbling bay above and belonging to the said mill of the said de-
fendant, but below the said mills of the said defendant, at the parish
aforesaid, into a certain back channel or water course there leading
from the said tumbling bay into the said river Wandle below the
said mill of the said defendant, and from thence into the said river
Thames, so that the water of the said river Wandle might not be
penned back upon the mills and hinder and obstruct the work
thereof, to wit, at the parish aforesaid; yet the said defendant,
well knowing the premises, but contriving and wrongfully and in-
juriously intending to injure the said plaintiff, and to deprive him
of the benefit and advantage of working his said mills, and of the
profit

profit that might otherwise arise and accrue therefrom, heretofore, to wit, on the first day of September, A. D. 1777, and from thence hitherto hath wrongfully and injuriously kept and continued, and caused to be kept and continued wrongfully and unjustly raised and erected much higher, to wit, ten inches higher than the same ought to have been erected; whereby the water, on the day and year aforesaid and on divers other days and times between that day and the day of exhibiting this bill, running and flowing from the said mills of the said plaintiff, in and along the ancient channel of the river W. unto the aforesaid mill of the said defendant after arising, arriving, and being at the aforesaid height, to wit, &c. the height of feet and inches, at the head of the said mill of the said defendant, arose to a much greater height, to wit, ten inches higher than it ought to have arisen on those several days and times, by means of the said tumbling bay of the said defendant so being higher from the bed of the said river W. the same being ten inches higher than it ought to have been, and continued so higher than it ought to have been for a long time, to wit, for the space of ten hours on and at those several days and times, and was by the means aforesaid obstructed, stopped, hindered, and prevented from running and flowing over the tumbling bay before the said mill of the said defendant, and thereby became and was penned back upon the wheels of the mills of the said plaintiff, whereby the said mills, for and during the respective times aforesaid, were hindered and prevented from working; and the said plaintiff thereby lost and was deprived of the profit, benefit, and advantage that would otherwise have arisen and accrued unto him from the working of the said mills, to wit, at the parish aforesaid.

J. MORGAN.

YORKSHIRE, to wit. H. K. complains of J. L. being, Declaration a. &c.; for that whereas the said plaintiff, on, &c. and before was, gainst defend- and from thenceforth hitherto hath been, and still is lawfully pos- ant, for divert- sessed of and in divers, to wit, three ancient water mills, with the ing an ancient appurtenances, situate and being in the township of T. in the water course which supplied plaintiff's mill. county of the city of York, in, upon, and near to a certain river there called the river W. and by reason of his possession of the said respective mills, with the appurtenances, the said H. during all the time aforesaid, of right ought to have had, and still of right ought to have the use, benefit, and advantage of the water of the said river for the working of his said respective mills; yet the said J. well knowing the premises, but contriving and maliciously intending wrongfully to injure and prejudice the said H. in this behalf, and to deprive him of the use, benefit, and advantage of his said mills, with the appurtenances, whilst the said H. was so possessed as aforesaid, to wit, on the said first day of December 1784, and on divers other days and times between that day and the day of exhibiting this bill, wrongfully and injuriously cut, dug, made, and opened, and caused to be cut, dug, made, and opened a certain cut, channel, or water course, of great depth, width, and length, to wit, of the width of sixty feet, of the depth of ten feet,

TORT.—WATER COURSE—OBSTRUCTING WAY.

and of the length of two hundred feet, in a certain close of the said J. called D. Close, situate in the township of C. in the said county of York, the said cut, channel, or water course, extending to and opening into the course and channel of the said river in a certain part thereof in the township of C. above the said mills of the said H. with the appurtenances, and kept and continued the said cut, channel, or water course, so cut, dug, made, and opened there, and so extending to and opening into the course and channel of the said river as aforesaid, for a long space of time, to wit, continually from thenceforth hitherto, and thereby, during all that time turned and diverted a great part of the water of the said river called the river W. from the ancient and usual course and channel of the said river into the said cut, channel, or water course so cut, dug, made, and opened by the said J. as aforesaid, and thereby, during all that time, prevented and hindered the water of the said river from running and flowing in its ancient course unto the said mills of the said H. and from supplying the same with water for the working of the same mills in so ample and beneficial a manner as during all that time it otherwise would and ought to have done; by reason whereof the said H. during all that time, could not have water sufficient for the working of his said mills in so ample and beneficial a manner as he otherwise would and ought to have done, but during all that time lost the greatest part of the

2d Count, for use, profit, and advantage of his said mills, to wit, at, &c. : And obstructing a way which plaintiff had over a close of defendant's to plaintiff's mill dam for the purpose of repairing the same, by cutting a channel across the way. whereas also the said H. on the first day of December 1784, and long before was, and still is possessed of a certain ancient wear or mill dam, with the appurtenances, part thereof situate and being in the said township of T. and the residue in the said township of C. in and across a certain other river there called the river W. and by reason thereof, during all the time aforesaid, of right ought to have had, and still of right ought to have, a way for himself and his servants, from the king's common highway leading between the village of T. in the said county of Y. into, through, and over a certain close of the said J. called D. Close, in the said county of Y. unto the said wear or mill dam of the said H. and so from thence back again to the said king's common highway, to go, return, pass, and repass, on foot and with horses, carts, and carriages, at his and their free will and pleasure, when and as often as occasion hath required, for the purpose of repairing and amending the said wear or mill dam; yet the said J. well knowing the last-mentioned premises, but contriving and maliciously intending to injure and prejudice the said H. in this behalf, and to deprive him of the use, benefit, and advantage of his said wear or mill dam, and of his said way to the same, whilst he the said H. was so possessed of the said last-mentioned wear or mill dam, with the appurtenances, as aforesaid, to wit, on the said first of December 1784, and on divers other days and times between that day and the day of exhibiting this bill, wrongfully and injuriously cut, dug, and made, and caused to be cut, dug, and made, a certain other cut or channel of great width, depth, and length, to wit, of the

the width of sixty feet, of the depth of ten feet, and of the length of two hundred feet, in the said last-mentioned close, in and across the said way there, and continued and kept them so dug, cut, and made there for a long space of time, to wit, continually from thenceforth hitherto, whereby the said way there was, during all that time, stopped up and obstructed, and the said H. and his servants could not, during all or any part of that time pass or repass on foot, and with horses, carts, and carriages, from the said common king's highway to and over the said close of the said J. there called D. Close, into the said wear or mill dam of the said H. and from thence back again to the said common king's highway, in and along the said way of the said H. there, for the purpose of repairing and amending the said wear or mill dam when occasion required, as they ought to have done, and the said H. during all that time, lost and was deprived of the use, benefit, and advantage of his said way there, and was prevented and hindered from repairing or amending his said wear or mill dam, to wit, at the township of C. aforesaid, in the said county: And whereas also the said H. on the first of December 1784 aforesaid, and long before was, and continually from thenceforth hitherto hath been, and still is lawfully possessed of and in a certain ancient salmon heck, with the appurtenances, situate and being in a certain part of the said river called the river W. in the township of T. in the said county of the city of Y. aforesaid, for the taking and catching of salmon there, and during all that time was lawfully entitled to the sole right and privilege of fishing for, taking, and catching salmon there in the said salmon heck: And whereas during all the time last aforesaid the water of the said river W. of right ought to have run and flowed, and still of right ought to run and flow in its ancient and accustomed course to the said salmon heck of the said H. for the better supplying of the said salmon heck, and the said fishery of the said H. with the salmon of the said river without any diversion of the course of the water of the same river to prevent the same salmon from coming to the said salmon heck, and from being there taken and caught by the said H.; nevertheless the said J. well knowing the premises last aforesaid, but contriving and maliciously intending to injure and prejudice the said H. in this behalf, and to deprive him of the use, benefit, and advantage of his said salmon heck and fishery, whilst the said H. was so possessed thereof and entitled as aforesaid, to wit, on, &c. wrongfully and injuriously, newly cut, dug, made, and opened, and caused to be newly cut, dug, made, and opened a certain other large cut or channel of great width, depth, and length, to wit, of the width of sixty feet, of the depth of ten feet, and of the length of two hundred feet, in a certain other close or parcel of land of the said J. called, &c. and adjoining to the said river there, the said last-mentioned cut or channel extending to and opening into the ancient channel or course of the said river there above the said salmon heck of the said H. and kept and continued the said last-mentioned cut or channel so cut, dug, made, and opened as aforesaid,

3d Count, for diverting the ancient course of the river which supplied the plaintiff's salmon heck, by digging a channel, *per quod*, &c.

4th Count, for diverting the ancient course of the river in which plaintiff had a right of free fishery, by cutting a channel and thereby diverting the course of the river, *per quod* many of the fish were destroyed.

said, and so extending to and opening into the ancient course or channel of the said river W. as aforesaid, for a long space of time, to wit, from thenceforth continually hitherto, and during all that time, turned and diverted a great part of the water of the said river called the W. from the ancient, proper, and usual course and channel of the said river above the said salmon heck, into the said last-mentioned cut or channel, whereby the water of the said river, during all that time, was prevented from running and flowing to the said salmon heck in so copious and beneficial a manner as it otherwise might and would have done, and as well for want of a sufficient current and stream of water running down to the said salmon heck into the ancient and usual course of the said river as aforesaid, as also by means of large quantities of the salmon of the said river W. going into and remaining in the said last-mentioned cut or channel, and being there taken and destroyed, the number of the salmon of the said river coming to the said salmon heck of the said H. hath been and is greatly diminished, and the said H. hath been prevented from taking and catching so many salmon in his said salmon heck as during that time he otherwise would and might have done, and during all the time last aforesaid could not, nor yet can have used and enjoyed his ancient salmon heck and fishery in so ample and beneficial a manner as he ought to have done, but during all that time lost and was deprived of great part of the use, benefit, and advantage thereof, and the said salmon heck and fishery are rendered of little or no use or value to the said H. to wit, at, &c. : And whereas also the said H. on, &c. and long before was, and continually from thenceforth hitherto hath been, and still is lawfully possessed of and in a free and several fishery in the aforesaid river called the river W. to wit, in a certain part of the said river situate in the township of T. in the said county of the said city of Y. : And whereas the said H. during all the time last aforesaid of right ought to have had and enjoyed, and still of right ought to have and enjoy the free and uninterrupted use, benefit, profit, and advantage of the said last mentioned fishery, without any disturbance, molestation, or interruption whatsoever; nevertheless the said J. well knowing the last-mentioned premises, but contriving and maliciously intending to injure and prejudice the said H. in this behalf, and to deprive him of the use, benefit, profit, and advantage of the said last-mentioned fishery as aforesaid, to wit, on, &c. wrongfully and injuriously cut, &c. and caused to be cut, &c. of great width, &c. in a certain other close or parcel of land of the said J. called &c. situate in, &c. adjoining to the said river there, the said last-mentioned cut or channel extending to and opening into the course or channel of the said river W. there, near to the said fishery of the said H. last-mentioned, and kept and continued the said cut or channel so cut, &c. there for a long space of time, to wit, continually from thenceforth hitherto, and thereby, during all that time, turned and diverted a great part of the water of the same river from its ancient and usual course and channel, and from the said last-mentioned fishery of the said H.

into

into the said cut or channel so cut, dug, and made as last aforesaid, whereby as well for want of a sufficient supply of water in the said last-mentioned fishery, as also by means of great numbers of the fish in the said river W. going into and remaining in the said last-mentioned cut or channel, and being then taken and destroyed, the number of the fish of the said river, coming into the said last-mentioned fishery of the said H. hath been and is greatly diminished, and the said H. hath been prevented and hindered from taking and catching so many fish in his said last-mentioned fishery as during that time he otherwise might and would have done; and the said H. by reason of the said last-mentioned premises, during all the time last aforesaid, could not, nor can yet have, use, and enjoy his said last-mentioned fishery, in so ample and beneficial a manner as he ought to have done, and still ought to do, but during all the time aforesaid lost and was deprived of great part of the use, benefit, and advantage of his said fishery, and the said fishery is thereby greatly diminished and lessened in value, and rendered of little or no use to the said H. to wit, at, &c. Damages.

A. CHAMBRE.

YORKSHIRE, to wit. William Brown complains of R. G. being, &c.; for that whereas the said R. on the day of 1788, at Rippon, in the said county, was possessed of and kept divers, to wit, two tups or rams, the same being then and there very vicious, fierce, unruly, and very improper to go at large and to wander about; yet the said R. well knowing the said tups and rams to be so vicious, fierce, unruly, and improper to go at large and wander about, afterwards, to wit, on the same day and year aforesaid, at, &c. negligently, remissly, and carelessly permitted and suffered the said tups or rams to go at large and wander about from place to place, which said tups or rams of the said R. afterwards, to wit, on the same day and year aforesaid, at, &c. so being at large and suffered to wander about by the neglect and default of the said R. broke and entered a certain close of the said W. lying and being in the said parish of Rippon, in the said county, *the said close being then and there sufficiently fenced and inclosed*, and then and there attacked, fought with, bruised, and wounded a certain tup or ram of the said W. of great value, to wit, of the value of twenty pounds, then being in the said close of the said W. in a very grievous manner, insomuch that the said tup or ram of the said W. afterwards, to wit, on the same day and year aforesaid, at, &c. died. [2d Count like the first, omitting what is in Italic. 3d Count, stating the defendant to have only one ram instead of two]; to the damage of the said W. of fifty pounds, and therefore he brings suit, &c.

* Declaration against defendant (who kept two rams which he knew to be vicious), for suffering them to wander about, and which said rams broke into plaintiff's close, and fought with and killed a ram of the plaintiff's.

Drawn by MR. J. GRAHAM.

• This Precedent is here misplaced. See TORTS to Personal Property, INDEX.

Landlord of a
copyhold estate
against his tenant
for very exten-
sive waste.

ad Count, as
tenant at will
thereof to him
said plaintiff, at
and under a cer-
tain rent.

SURRY, to wit. Luke Lightfoot complains of Farrer Gibbon being, &c. in a plea of trespass on the case; for that whereas long before and at the time of the committing of the grievance hereafter next mentioned, he said plaintiff was seised in his demesne as of fee at the will of the lord of the manor of Norwood, in the county of Surry, according to the custom of the said manor of and in a certain messuage or dwelling house, and divers, to wit, fifteen acres of land, with the appurtenances, situate, lying and being in the parish of St. Mary Lambeth, in the county of Surry, within and parcel of the manor aforesaid: And whereas said defendant on the day of A. D. at the parish aforesaid, in the county aforesaid, was the possessor and occupier of said messuage, lands, and premises with the appurtenances, and during all that time there held the same of the said plaintiff as his tenant thereof, to wit, *from year to year at the will of said plaintiff and defendant at and under a certain yearly rent, to wit, the yearly rent of pounds, payable by said defendant to said plaintiff for the same;* [and the said defendant being so possessed thereof, he the said defendant afterwards, to wit, on the day of A. D. at, &c. aforesaid, surrendered and yielded up the possession of said messuage, lands, and premises, to wit, unto said plaintiff;] yet said defendant contriving and fraudulently and maliciously intending to hurt and injure said plaintiff in his estate of inheritance of and in the said messuage or dwelling house, out-house, stables, coach houses, brew house, and land with the appurtenances during the time that he said defendant was possessed of said several premises with the appurtenances, [and some time before he said defendant left and yielded up the possession of said premises with the appurtenances,] and whilst he said plaintiff was so seised thereof, as aforesaid, to wit, on the day of A. D. at, &c. aforesaid, wrongfully and unjustly broke down, pulled down, prostrated, broke to pieces, spoiled, and destroyed, divers chimney pieces, to wit, ten marble chimney pieces, ten other stone chimney pieces, and ten wood chimney pieces, twenty facings to fire places of marble, twenty facings to fire places of other stone, and divers, to wit, ten marble slabs, ten marble hearths, ten stone slabs, and ten stone hearths, affixed to and parcel of the freehold of said messuage or dwelling house, and broke to pieces, prostrated, spoiled, and destroyed five hundred yards of balustrade and five hundred yards of railing or bannisters of and belonging to and affixed to, and being parcel of the freehold of said messuage, &c. and broke down, cut down, broke to pieces, spoiled, and destroyed divers doors and door cases, ten mahogany doors, ten mahogany door cases, ten wainscot doors, &c. &c. &c. deal, &c. fir, &c. affixed to and being parcel of the freehold of said messuage or, &c. and broke to pieces, cut to pieces, spoiled, and destroyed the windows and window frames, wainscoting, and cornices, to wit, forty windows, forty window frames, five hundred square yards of wainscoting, and five hundred rods of cornices of and belonging to said messuage or, &c.

&c. and broke down, prostrated, pulled down, spoiled, and destroyed the brick work of and belonging to said messuage or dwelling house, to wit, five thousand rods thereof, and broke down, spoiled, and destroyed all and singular the ceilings of and belonging unto said messuage or, &c. and broke down, cut, spoiled, and destroyed the timbers, beams, rafters, joists, and floors of said messuage or, &c. and thereby greatly weakened, disjointed, ruined, damaged, and spoiled said messuage or, &c. and dug up the hedges, quicksets, and fences of and belonging to the lands aforesaid, and lately growing therein or parcel of said premises, and broke down, pulled down, prostrated, and destroyed the wood fences, gates, and stiles of and belonging to said lands in the soil and freehold thereof; whereby the said plaintiff was and is greatly injured and damnified of and in his estate of inheritance of and in his said messuage or dwelling house and land, with the appurtenances, to wit, at, &c. aforesaid. [Second Count, stating defendant to be tenant at will. Third and fourth same as first and second, omitting what is contained in the crotchets.

J. MORGAN.

SURRY, to wit. John Armitage complains of John Allen Landlord who being, &c. in a plea of trespass on the case; for that whereas long had a life estate before, and at the time of the committing of the grievance here- in the premises after mentioned, the said plaintiff was seised in his demesne as of against tenant freehold, that is to say, for the term of his natural life of and in for years, for divers, to wit, three messuages or dwelling houses, and divers out pulling down outhouses, walls, houses and other erections and buildings, to wit, one brew house, gates, &c. one mill house, two starch houses, one starch stove, one out house or building, called a leantoo, one stable, one cart shed, one loft, two grain pits, three hog styes, one garden, and divers, to wit, four acres of land, with the appurtenances, situate, lying, and being at St. Mary Lambeth, in the said county of Surry; and whereas he said defendant on the twenty-sixth of June 1773, and before and from thence hitherto hath been, and still is the possessor and occupier of the said messuage, lands, and premises with the appurtenances and during all that time held the same of the said plaintiff, that is to say, as his tenant thereof, for a certain term of years which is yet to come and unexpired at and under a certain yearly rent, to wit, the yearly rent of sixty pounds, payable yearly by the said defendant to the said plaintiff for the same, to wit, at the parish aforesaid; yet said defendant contriving and fraudulently and injuriously intending to hurt and injure said plaintiff in his estate of inheritance of and in the said messuages, outhouses, erections, buildings, and other the premises with the appurtenances, during the time that he said defendant held the same of said plaintiff as his tenant thereof as aforesaid, and whilst said plaintiff was so seised thereof as before mentioned, to wit, on the first day of May, A. D. 1774, at the parish aforesaid,

P p 4.

wrongfully

wrongfully and unjustly, and without the leave or licence, and against the will of the said plaintiff, broke down, pulled down, prostrated, spoiled, and destroyed the rafters, beams, joists, roofs, ceilings, walls, wainscots, floors, windows, window frames, doors and door cases of and belonging to the said several messuages or dwelling houses, and wrongfully, unjustly, and without the leave or licence and against the will of said plaintiff pulled down, prostrated, and destroyed the said outhouses, erections, and buildings, to wit, said brew house, mill house, two starch houses, said starch stove, said outhouse or building called a leantoo, said stable, said cart shed, said loft, said two grain pits, said three hog styes, and divers, to wit, fifty perches of a certain wall, to wit, a wall belonging to the said garden, part and parcel of the said premises, and took and carried away the materials, to wit, forty cart loads of brick, forty cart loads of pantiles, stones, mortar, timber, planks, and boards of said plaintiff thereof coming, of a large value, to wit, of the value of two thousand pounds, and converted and disposed thereof to his own use, and then and there dug up and destroyed the pavements of and belonging to the said brew house, mill house, starch houses, starch stove, outhouse or building called a leantoo, stable, cart shed, grain pits, and hog styes, and took and carried away the materials, to wit, ten cart loads of other bricks, pantiles, and stones of said plaintiff thereof coming, of a large value, to wit, of the value of one hundred pounds, and converted and disposed thereof to his own use, and then and there wrongfully and unjustly, and without the leave and licence, and against the will of said plaintiff broke down, pulled down, dug up, prostrated, spoiled, and destroyed the gates and gate posts then erected, standing, and being on and parcel of the said premises, to wit, twenty gates and forty gate posts and the materials, to wit, two cart loads of timber, and two cart loads of wood, and divers hooks, locks, staples, and hinges, with which the said gates were fastened of said plaintiff of a large value, to wit, or the value of other forty pounds thereof coming, took and carried away, and converted and disposed thereof to his own use, to wit, at the parish aforesaid, whereby said plaintiff was and is greatly hurt, injured, and damnified in his estate of inheritance of and in his aforesaid premises with the appurtenances, to wit, at, &c. aforesaid. [Add another Count leaving out the conversion.]

I. MORGAN.

Landlord having
an estate for life,
according to the
custom of the
manor in the
premises, against
his tenant for
ploughing ancient
meadow
land.

ESSEX, to wit. Sir John Silvester, knight, complains of Joseph Sureties being in the custody, &c. in a plea of trespass on the case; for that whereas long before and at the time of committing of the grievances hereafter mentioned, he the said plaintiff was seised in his demesne as of freehold, that is to say, for the term of his natural life at the will of the lord of the manor of Sewardston, in the said county of Essex, according to the custom of the said manor of and in a certain messuage or dwelling, and

and divers, to wit, one hundred acres of land, with the appurtenances, situate, lying, and being in the parish of Waltham Holy-cross, in the said county of Essex, and within and parcel of the said manor; and whereas he said defendant afterwards, to wit, on the day of A. D. and before and from thence for a long time, to wit, until the day of exhibiting the bill of the said plaintiff, to wit, at the parish aforesaid in the county aforesaid, was the possessor and occupier of the said messuage, lands, and premises with the appurtenances; and during all that time there held the same of said plaintiff, that is to say, as his tenant thereof, to wit, from year to year at the will of the said plaintiff and defendant, at and under a certain yearly rent, to wit, the yearly rent of one hundred pounds payable by said defendant to the said plaintiff for the same; yet said defendant contriving, and fraudulently, wrongfully, and injuriously intending to hurt and injure said plaintiff in his estate of inheritance of and in the said messuage and lands, with the appurtenances, during the time that he the said defendant held the same of said plaintiff as his tenant thereof as aforesaid, and whilst the said plaintiff was so seised thereof as before mentioned, to wit, on the day of A. D. at, &c. aforesaid, wrongfully and unjustly, and without the leave and licence and against the will of said plaintiff with ploughs and other iron instruments, ploughed up, broke up, and subverted the land, to wit, one close or piece of land called, &c. containing divers, to wit, eight acres, the same being ancient meadow land, and one other close or, &c. called, &c. containing, &c. containing, &c. the same being ancient meadow land, and the said two closes or pieces of land being part and parcel of the said premises, whereby said plaintiff was and is greatly injured and damnified of and in his estate of inheritance, and of and in his said land, to wit, at, &c. aforesaid. [Second Count same as the first, only stating defendant to be a tenant for a certain term of years, not yet expired. Third Count, tenant at the will of plaintiff and defendant. Three more Counts for divers, to wit, twenty acres of ancient meadow land.]

I. MORGAN.

BUCKINGHAMSHIRE, to wit. Thomas Ford complains Declaration in of Francis Chittle, being in the custody of, &c. in a plea of tresp- case in nature pass on the case; for that whereas the said plaintiff, before and at of waste by the time of the committing of the grievance hereafter next men- landlord, seised tioned was, and from thence hitherto hath been, and still is in fee simple, against tenant seised in his demesne as of fee of and in a certain messuage or for years not in dwelling house, situate in Buckingham, in said county of Bucks, actual possession heretofore in the tenure and occupation of one Edmund Darley, for voluntary and permissive waste, in pulling rated and divided, and of a certain stable, one other outhouse, and leaving pre- down wainscot, edifice, or building called a wood loft, and divers other houses, m.s. in that condition at the there then also situate, and being with their and every of their end of term, per
 grad, plaintiff obliged to lay out money in repairs, as well as injured in his estate.
 appurtenances;

appurtenances; and whereas the said defendant heretofore and whilst said plaintiff was so seised as aforesaid, to wit, on the first day of August, A. D. 1777, and from thence until, and at, and after the committing of the grievance hereafter next mentioned, held the said messuage or dwelling house first above mentioned together with the aforesaid stable and outhouses of the said plaintiff, with the appurtenances, as tenant thereof to him said plaintiff for the residue and remainder of a certain term of years thentofore thereof demised to him said defendant by said plaintiff, to wit, at B. aforesaid; yet the said plaintiff in fact saith, that said defendant, contriving, and fraudulently and maliciously intending wrongfully and unjustly to hinder and prejudice said plaintiff in his aforesaid estate of inheritance of and in the said last-mentioned messuage or dwelling house, stable, and outhouse, with the appurtenances, during the time that he the said defendant held the same as tenant thereof to said plaintiff as aforesaid, and whilst the said plaintiff was so seised thereof as aforesaid, to wit, on the first of April, A. D. 1782, at B. he said defendant wrongfully and unjustly broke down, pulled down, broke to pieces, spoiled, and destroyed, and caused, &c. to be, &c. a great part of the wainscoting, flooring, stairs, and staircases, to wit, twenty square yards of the wainscoting, twenty square yards of the flooring, forty stairs, and twenty yards of the staircases, in, of, and belonging to, and part and parcel of said last-mentioned messuage or dwelling house, and affixed to the freehold thereof, and broke to pieces, spoiled, and destroyed, and caused, &c. divers of the windows and window frames, to wit, ten glass windows and ten window frames, with the lead and iron work thereof, in, of, and belonging to, and part and parcel of the said last-mentioned messuage or dwelling house, affixed to the freehold thereof, and broke down, pulled down, spoiled, and destroyed, and caused, &c. divers, to wit, twenty shelves before then affixed and set up in, of, and belonging to the said last mentioned messuage or dwelling house and part of the freehold thereof, and broke to pieces, damaged, and spoiled, and caused, &c. divers, to wit, twenty cocks, twenty hoops, and twenty hinges, in, of, and belonging to the said last-mentioned messuage or dwelling house, and part and parcel of the same, and of the freehold thereof, and by and through the means of a great and considerable number of persons, who were taken into and housed in the said last-mentioned messuage or, &c. without the leave or licence, and against the will of the said plaintiff, greatly damaged, daubed, dirtied, and spoiled the same, and the rooms and apartments thereof, and the floors, wainscots, and ceilings of the same, and also broke up, tore up, destroyed, and spoiled, and caused, &c. divers, to wit, four hearths and four chimney pieces, and a great part of the pavements, in, of, and belonging to, and part and parcel of said last-mentioned messuage or dwelling house, and affixed to the freehold thereof, and greatly damaged and spoiled, and caused, &c. the aforesaid stable and outhouses

Houses held by him said defendant as aforesaid, in the roofs, tilings, coverings, and timber thereof, and the materials arising and coming from the aforesaid waste and devastation, to wit, &c. of a large value, in the whole, to wit, of the value of fifty pounds of lawful, &c. took and carried away, and converted and disposed thereof to his own use; whereby said plaintiff was, hath been, and is greatly injured and damnified in his aforesaid estate of inheritance of and in the said messuage or dwelling house, stable, and outhouses so held by said defendant as aforesaid, with the appurtenances, and hath been forced and obliged to lay out and expend a large sum of money, to wit, the sum of one hundred pounds of such lawful money as aforesaid, in and about repairing and making good the damage so done to the same by said defendant as aforesaid, to wit, at B. aforesaid: [*Second Count for permissive waste, as 2d Count, follows:*] suffered and permitted a great part of the wainscoting, &c. in, of, and belonging, &c. to be wrongfully broken down, &c. [as in first Count and in addition] that defendant wrongfully, &c. suffered and permitted said messuage or, &c. so by him held of said plaintiff as aforesaid to be ruinous, out of repair, and in great decay in various other parts of the roofs, tilings, and coverings of the same, and in the floorings, pavements, wainscoting, flaring, windows, and window frames, and in the brick work, wood, and timber thereof, and so remain and continue until the end and expiration of the aforesaid demise to him said defendant, when he left and yielded up the said several premises so by him held of said plaintiff as aforesaid, so ruinous, in decay, and damaged as aforesaid, to the said plaintiff; whereby, &c. [as in first Count]. [Third Count as second, only stating, defendant to be a tenant from year to year.]

V. LAWES.

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| <p>REED ESQUIRE
against
MARTEN AND ANOTHER.</p> | } | <p>CORNWALL, to wit. Thomas
Reed esquire complains against John
Marten and James Marten, being,
&c. for that whereas the said Thomas at the time of committing
of the grievance hereinafter next mentioned, to wit, on the first
of November 1778, and long before was, and continually from
thenceforth hitherto hath been, and still is seised in his demesne
as of fee of and in divers large pieces and parcels of land, con-
tiguous and adjoining to each other, called and known by the
name of Halehish, containing together by estimation divers, to
wit, ten acres of land, and ten acres of pasture, with the appur-
tenances, situate, lying, and being, in the parish of Stythians,
in the said county of Cornwall, which said tenements with the
appurtenances, of the said Thomas, during all the time afore-
said, have been, and still are in the tenure and occupation of
one David Reed, as tenant thereof to the said Thomas, at and
under a certain yearly rent, payable by the said David Reed to the
said</p> | <p>Declaration by
reversioner
against defend-
ants for digging
mines on his
estates.</p> |
|---|---|--|--|

said Thomas for the same; yet the said John and James, well knowing all and singular the premises aforesaid, but contriving and maliciously intending, wrongfully and injuriously to hurt, injure, aggrieve, and prejudice the said Thomas in this behalf, and to diminish and lessen the value of the said tenements, with the appurtenances, of the said Thomas, and to injure and prejudice the said Thomas in his reversionary estate and interest therein, whilst the said Thomas was so seised thereof, and whilst the same so were in the tenure and occupation of the said David Reed as his tenant thereof, to wit, on the said first of November 1778, and on divers other days and times, between that day and the day of exhibiting the bill of the said Thomas, at the parish of Stythians aforesaid, in the county aforesaid, wrongfully and unjustly, and without the licence, and against the will of the said Thomas, with divers instruments, to wit, with pickaxes, spades, shovels, crows, and other iron instruments, sunk, made, and opened, divers large pits and holes, to wit, fifty pits and fifty holes, of the length of one hundred feet, of the depth of five hundred feet, and of the breadth of one hundred feet, respectively in the said tenements, with the appurtenances, of the said Thomas, and the said pits and holes so sunk, made, and opened, kept and continued open for a long space of time, to wit, from that time until the day of exhibiting of the bill of the said Thomas, and therein and thereon got and raised divers large quantities of earth, stones, sand, and gravel, to wit, five hundred cart loads of earth, five hundred cart loads of stone, five hundred cart loads of sand, and five hundred cart loads of gravel, of two hundred pounds, and seised, took, and carried away the same, and converted and disposed thereof to their own use; by reason of which said premises, the said tenements, with the appurtenances, of the said Thomas, became and were very much injured and damnified; and the reversionary interest and estate of the said Thomas therein very much lessened and diminished in value, to wit, at the parish of Stythians aforesaid, in the county aforesaid: [Second Count, trover for earth, stones, sand, and gravel.] W. LOWNDES.

There were two actions for the same injury. Sir F. Basset was entitled to a third of the estate, and the plaintiff Reed to one-third. Mr. Lowndes, thought they could not join in an action

on the case, as they were tenants in common, and their interest in the reversion and inheritance, being totally distinct and several.

Declaration for breaking down a party wall adjoining to plaintiff's house, whereby plaintiff's tenant was disquieted, and refused to live in his house.

LONDON, to wit. Thomas Fowler complains of Robert Milne; for that whereas the said Thomas, on, &c. and continually from thence hitherto until, at and after the committing the grievance hereafter next mentioned, was lawfully possessed of and in a certain messuage, with the appurtenances, situate, and being at L. aforesaid, to wit, in the parish of, &c. for a certain term of years not then expired, which said messuages of the said Thomas, during all the time aforesaid, was situate,

situate, standing, and being contiguous, and next adjoining to a certain messuage of the said Robert, situate at L. aforesaid, in the parish of W. aforesaid; nevertheless the said Robert, well knowing the premises, but maliciously contriving and intending to injure the said Thomas, and to annoy him and his tenant in the use and enjoyment of his said messuage, with the appurtenances, to wit, on, &c. at, &c.; greatly hurt, shook, damaged, and weakened the walls of the said messuage of the said Thomas, by then and there taking down and removing the said messuage of the said Robert, so being contiguous and adjoining to the same messuage of the said Thomas; and whereas also the said Thomas on, &c. and continually from thence until, &c. was lawfully entitled unto a certain other messuage with the appurtenances, situate, &c. at L. aforesaid, in the parish of W. aforesaid, for the remainder of a certain other long term of years, of which said messuage, one Lucy Carr, at the time of the committing of the grievance hereafter next mentioned, was tenant to the said Thomas, at and under the yearly rent of twenty pounds, payable by the said Lucy to the said Thomas for the remainder of the aforesaid term of the said Thomas in the same messuage; and whereas the said last-mentioned messuage, before and at the time of committing the grievance hereafter next mentioned, was divided by a party wall from a certain other messuage of the said Robert, situate, &c.; nevertheless the said Robert, well knowing the premises, but, &c. the said Thomas, and to annoy him and his tenants in the use and enjoyment of his said last mentioned messuage, with the appurtenances, whilst the said Thomas was so possessed of his same messuage with the appurtenances, to wit, on, &c. at, &c. broke down, damaged, broke into, and weakened the said party wall, in separating and dividing the said last-mentioned messuage of the said Thomas from the said last-mentioned messuage of the said Robert, and thereby greatly disturbed and disquieted the said Lucy Carr, the tenant of the said messuage of the said Thomas, in the enjoyment and occupation thereof, insomuch that the said Lucy Carr then being a tenant of the said Thomas in possession of his said last-mentioned messuage, afterwards, to wit, on, &c. was obliged to quit, and actually did quit the same, and refused to continue tenant thereof to the said Thomas, that is to say, at, &c.; whereupon the said Thomas saith that he is injured, and hath sustained damage to the value of two hundred pounds, and therefore he brings his suit, &c.

V. LAWES.

YORKSHIRE, to wit. Whereas the said plaintiff before the committing of the grievance hereinafter next mentioned, to wit, on the first of July 1787, and continually from thenceforth hitherto hath been, and still is seised in his demesne as of fee of and in a certain close of land, situated, lying, and being, in the parish of , in the said county, which said close, during all the time aforesaid, was and still is in the possession and occupation of one

Plaintiff seised in fee of a close of land, for digging pits and quarries, pulling down walls,

W. Y.

2d Count, plaintiff seised in fee of a close, and a wall standing thereon.

W. Y. as tenant thereof to the said plaintiff; nevertheless the said defendants, well knowing the premises, but contriving wrongfully, and injuriously intending to injure the said plaintiff in his estate and interest of and in the said close with the appurtenances, and whilst he the said plaintiff was so seised thereof as aforesaid, and during the possession of the said W. as tenant thereof to the plaintiff, to wit, on the first of July 1787, and on divers other days and times, between that day and the day of, &c. at the parish aforesaid, in the said county, wrongfully and injuriously, and without the licence and consent of the plaintiff, and against his will, with spades, shovels, and other iron instruments, dug up, turned up, and subverted the earth and soil of the said plaintiff in the said close, and then and there wrongfully and injuriously, and without the licence and consent of the said plaintiff, and against his will, dug, made, and sunk, divers quarries, pits, and holes in the said close of the said plaintiff there, to wit, fifty quarries, fifty pits, and fifty holes of great length, breadth, and depth respectively, to wit, fifty yards in length, fifty yards in breadth, and fifty yards in depth respectively, and from and out of the said quarries, pits, and holes, so dug, made, and sunk, wrongfully and injuriously, and without the licence and consent of the said plaintiff, and against his will, raised, dug, and got divers large quantities of earth, soil, stone, and gravel, to wit, five hundred cart loads of earth, five hundred cart loads of stones, five hundred cart loads of soil, and five hundred cart loads of gravel, of the value of pounds of, &c. and took and carried away the same, and converted and disposed thereof to his own use; by reason and means whereof, the estate and interest of the said plaintiff in the said close with the appurtenances, is greatly prejudiced and diminished, and lessened in value, to wit, at, &c.: And whereas also the said plaintiff, before the time of committing the grievance hereinafter next mentioned, to wit, on, &c. and continually from thenceforth hitherto hath been, and still is seised in his demesne as of fee of and in a certain other close of land called the Stack Yard, and a certain wall erected, standing, and being, in and upon the said last mentioned closes, situate, lying, and being at the parish aforesaid, in the said county, which said last mentioned close and wall, during all the time last aforesaid, were and still are in the possession and occupation of the said W. Y. as tenant thereof to the said plaintiff; nevertheless the said defendants well knowing the premises, but contriving, and wrongfully and injuriously intending to injure the said plaintiff in his estate and interest of and in the said last mentioned close and wall, whilst the said plaintiff was so seised thereof as aforesaid, and during the possession of the said W. Y. as tenant thereof as aforesaid, to wit, on the first of July 1787, and on divers, &c. at, &c. wrongfully and injuriously, and without the licence and consent, and against the will of the said plaintiff, pulled down, threw down, prostrated, and destroyed the said wall of the said plaintiff in the said last-mentioned close, then erected, standing, and being,

being, by reason and means whereof the estate and interest of the said plaintiff in the said last-mentioned close and the said wall, then there erected, standing, and being, are greatly damaged, injured, and lessened in value, to wit, at, &c.: [Count for trover, for five hundred cart loads of earth, five hundred cart loads of stones, five hundred cart loads of soil, and five hundred cart loads of gravel, bricks, rubbish.] *Drawn by* MR. J. GRAHAM.

BERKSHIRE, to wit. Edmund Seymour esquire complains Plaintiff seised in fee of divers lands, &c. for cutting timber. of Richard Povey the younger and William Povey being, &c. for that whereas the said E. before and at the time of committing the grievance hereinafter next mentioned, to wit, on the first of January 1788, and continually from thenceforth hitherto hath been, and still is seised in his demesne as of fee of and in divers lands and tenements, with the appurtenances, situate, lying, and being, in the parish of _____, in the said county of Berks, which said lands and tenements, during the time aforesaid, were and still are in the possession and occupation of one R. P. the elder as tenant thereof to the said E.; and whereas also whilst the said E. was so seised of the said lands and tenements, with the appurtenances, and whilst the said R. P. the elder was so possessed thereof as aforesaid, to wit, on the first of January 1788. divers and very many timber trees and other trees, likely to become timber were growing and being, in, and upon the said lands and tenements, with the appurtenances, and parcel of the freehold and inheritance thereof, to wit, at the parish aforesaid, in the said county; yet the said R. P. the younger and W. well knowing the premises, but contriving, and wrongfully and injuriously intending to injure the said Edmund, and to lessen and diminish his estate and interest of and in the said premises, whilst the said E. was so seised; and the said R. P. the elder so possessed as aforesaid, of and in the premises aforesaid, with the appurtenances, to wit, on said first of January 1788, and on divers other days and times, &c. at the parish aforesaid, in the said county, wrongfully and injuriously, without the licence and consent, and against the will of the said E. pulled down, cut down, grubbed up, prostrated, and destroyed, divers timber trees, and other trees, likely to become timber, to wit, one hundred oak trees, ten ash trees, ten elm trees, ten maiden oak trees, ten maiden ash trees, and ten maiden elm trees of great value, to wit, of the value of fifty pounds of, &c. then standing, growing, and being, in and upon the said premises, and part and parcel of the freehold and inheritance thereof, and then and there, wrongfully and injuriously, without the licence and consent, and against the will of the said Edmund, lopped, topped, and headed, divers other timber trees, and other trees likely to become timber, to wit, ten other oak trees, &c. &c. of other great value, to wit, of the value of other fifty pounds of, &c. then standing, growing, and being, in and upon the said premises, and part and parcel of the freehold and

and inheritance thereof, and the materials thereof coming, that is to say, ten cart loads of timber trees, ten cart loads of other trees likely to become timber, ten cart loads of other trees, ten cart loads of branches, ten cart loads of boughs, ten cart loads of chips, and ten cart loads of loppings of other great value, to wit, of the value of other fifty pounds of, &c. then and there seized, took, and carried away, and converted and disposed thereof to their own use, by reason and means of which said premises, the estate and interest of the said plaintiff in the said lands and tenements, with the appurtenances, is greatly injured and damaged, diminished and lessened in value, to wit, at, &c. Trover for ten cart loads of timber trees, ten cart loads of other trees, likely to become timber, ten cart loads of other trees, ten cart loads of branches, ten cart loads of boughs, ten cart loads of chips, and ten cart loads of loppings. Damage five hundred pounds.

Drawn by MR. J. GRAHAM.

Declaration against defendant for stopping up a trench in his close which conveyed the waste water of a mill stream near to defendant's close, into plaintiff's close for the melioration of the soil.

W. W. } ———, to wit. For that whereas the said plaintiff on, &c. was and from thenceforth hitherto hath been, and still is lawfully possessed of a certain close called, &c. situate, lying, and being, in the parish of, &c. in the said county of C. which said close now is, and during all the time aforesaid hath been contiguous and next adjoining to a certain close of the said defendant called, &c. situate, lying, and being in the parish aforesaid, in the said county, and which same close of the said defendant, during all that time, was and still is contiguous to a certain mill stream, in the parish aforesaid, running down to, and supplying a certain mill called, &c.; and whereas the waste water of the said mill stream, during all that time, ought to have run and flowed through a certain trench or channel in the said close of the said defendant into the said close of the said plaintiff, and the said William by reason of his possession of the said close, during all the said time ought to have had the use, benefit, and advantage of the said waste water for the watering, manuring, bettering, and improving the said close of the said plaintiff at all seasonable times, at his will and pleasure; yet said defendant, well knowing the premises, but contriving, and wrongfully and maliciously intending unjustly to injure, prejudice, and aggrieve him the said plaintiff in this behalf, and to deprive him of the use and benefit of the said waste water, afterwards and when there was more than sufficient water for the working of the said mill, and during the time that the said William was so, as aforesaid, possessed of his said close, to wit, on, &c. and on divers other days, &c. at, &c. wrongfully and unjustly stopped up, and caused to be stopped up the said trench or channel in the said close of the said defendant, and from thence hitherto hath kept the same so stopped up, and thereby during all that time wrongfully and unjustly prevented the said waste water from running and flowing into the said close of the said plaintiff; whereby the said plaintiff hath

hath during all the time aforesaid been, and still is deprived of the use and benefit of the said waste water, and has wholly lost the same, to wit, at, &c. : And whereas, &c. [same as the first, only stating the water to run and flow through a certain floodgate in the close of defendant on the side of the said mill stream communicating with a certain trench or channel in plaintiff's close, and that the plaintiff ought to have the benefit of the water through the floodgate, which the defendant stopped up, &c. &c. as before.]
 Damages, &c. F. BULLER.

LANCASHIRE, to wit. Be it remembered, that on Friday Record,
 next after the morrow of the Holy Trinity, in this same term, for obstructing
 before our sovereign lord the king at Westminster, comes Robert and diverting a
 Kershaw, by J. P. his attorney, and brings in the court of our water course
 said lord the king, before the king himself now here, his bill which supplied
 against William Lord, being, &c. of a plea of trespass on the plaintiff's cotton
 case; and there are pledges for the prosecution. to wit, John mill.
 Doe and Richard Roe, which said bill follows in these words, to
 wit, Lancashire, to wit: Robert Kershaw complains against
 W. L. being, &c. for that whereas the said R. on the first of
 January 1784, and long before, was, and from thence hitherto
 hath been, and still is lawfully possessed of a certain mill used for
 the carding of cotton and scribbling of sheep's wool, with the ap-
 purtenances, called P. M. situate and being at W. in the parish
 of R. in the county of L. aforesaid, and in which said mill he the
 said Robert, during all the time aforesaid, used, exercised, and
 carried on the trade, business, and employment of a carder of
 cotton and scribbler of sheep's wool, to wit, at the parish of R.
 aforesaid, in the county aforesaid: And whereas a certain water
 course from time, &c. until the time of the committing of the griev-
 ance hereafter next mentioned, did run and flow, and was accus-
 tomed to run and flow, and at the time of the committing of the
 grievance hereafter next mentioned, and from thence hitherto of
 right ought to have run and flowed from the upper side of a certain
 close of the said William called F. situate and being at the parish
 aforesaid, into, through, and along the said close called F. unto
 the said mill of the said R. in great abundance for the supplying
 the said mill with water for the driving and working of the said
 mill; yet the said William, well knowing all and singular the
 premises, but contriving and maliciously intending wrongfully
 and unjustly to hurt, injure, prejudice, and aggrieve the said
 Robert in his possession of the said mill with the appurtenances,
 whilst the said Robert was so possessed of the said mill with the
 appurtenances, to wit, on the said first of January 1784 afore-
 said, at the parish of R. aforesaid, in the county of L. aforesaid,
 wrongfully and unjustly made, erected, and set up, and caused
 and procured to be, &c. a certain mound or dam, with a certain
 large stone, earth, sods, and rubbish, in, over, and across the
 said water course, in that part thereof which is in the said close of
 the

the said William called F. at the parish of R. aforesaid, in the county aforesaid, and unjustly kept and continued the said mound or dam so there wrongfully and unjustly made, erected, and set up, for a long time, to wit, from thence hitherto, and thereby during all that time wrongfully and unjustly obstructed and stopped the water of the said water course from running in its ancient and accustomed course to the said mill of the said Robert, and wrongfully and injuriously turned and diverted the water of the said water course out of its ancient and accustomed course, and from the mill of the said Robert, upon and over the said close of the said William called F. at the parish of R. aforesaid; by reason whereof the said Robert from thence hitherto could not have water sufficient for the working of his said mill, and the said mill hath during all the time aforesaid been of no use whatsoever to the said Robert for want of a sufficient supply of water for the working of the same, occasioned by the premises aforesaid; and the said Robert hath during all that time thereby lost the whole benefit, profit, and advantage of his said mill, and is greatly prejudiced and damaged in his possession thereof, and in his said trade, business, and employment, to wit, at the parish of R. aforesaid, in the said county: And whereas also the said Robert, on the said first of January 1784, at the parish of R. aforesaid, in the county aforesaid, and long before, was, and from thence hitherto hath been, and still is lawfully possessed of and in a certain other ancient water mill, with the appurtenances, situate and being at the parish of R. aforesaid, in the county aforesaid, and by reason of such his possession thereof, during all that time of right ought to have had and enjoyed the free use and benefit of the water of a certain other water course, which before and until that time was used and accustomed to run and flow, and during all that time of right ought to have run and flowed, and still of right ought to run and flow from and through the said close of the said W. called F. situate and being at the parish of R. aforesaid, to the said last-mentioned water mill of the said Robert in great abundance, for the supplying of the same mill with water for the working thereof, to the great benefit and advantage of the said Robert; yet the said William, well knowing the premises, but contriving and fraudulently intending wrongfully and unjustly to hurt, injure, and prejudice the said Robert, and to deprive him of the benefit and advantage of his mill last aforesaid, while the said Robert was possessed of his said last-mentioned mill with the appurtenances, to wit, on the same day and year aforesaid, at the parish of R. aforesaid, in the county aforesaid, wrongfully and unjustly set up and erected, and caused and procured to be set up and erected a certain large stone or flag in, over, and across the said last-mentioned water course in the said close of the said William called F. and wrongfully and injuriously kept and continued, and caused to be kept and continued the said stone or flag so there set up and erected for a long space of time, to wit, from thence hitherto, and wrongfully and unjustly stopped and obstructed the water of the

the said last-mentioned water course from running and flowing in its ancient and accustomed course to the last-mentioned mill of the said Robert, whereby the said Robert was during all that time greatly hindered and obstructed in the working of his said mill for want of water sufficient for the working thereof, and thereby during all that time lost the profit and advantage of his said mill, to wit, at the parish of R. aforesaid, in the county aforesaid; to the damage of the said R. of five hundred pounds; and therefore, &c.

And the said William, by A. B. his attorney, comes and de- Plea, not guilty.
fends the wrong and injury, when, &c. and says that he is not guilty of the premises above laid to his charge in manner and form as the said Robert hath above thereof complained against him; and of this he puts himself upon the county; and the said Robert doth the like; therefore let there be a jury made thereof; and because the issue aforesaid between the parties above joined ought to be tried by men of the county palatine of Lancaster of the body of the said county where his said majesty's writ doth not run, and not elsewhere; therefore as to trying the issue aforesaid between the parties above joined, let the record of the plaint aforesaid be sent to his majesty's justices of the said county of L. so that the same justices, by his majesty's writ of that county to be duly made out, do command the sheriff of the same county that he cause twelve free and lawful men of the borough of the said county of L. to come before the said justices at their next sessions for the said county after the said record shall be delivered to them, each of whom having ten pounds a-year at least in lands, tenements, or rents, by whom the truth of the matter may the better be known and enquired into, and who are in no wise related either to the said Robert or to the said William, to recognize and make a jury of the county between the said parties in the plea aforesaid, because as well the said William as the said Robert, between whom the controversy is, have put themselves upon that jury; and when the verification and issue aforesaid shall be there made and tried, then the said justices shall send the record of the plaint aforesaid, together with every thing that shall be done thereupon before them in his majesty's court there, to our said lord the king at Westminster at a certain day which the same justices of the same county palatine shall appoint to the same parties to be in the same court there to hear judgment thereupon, &c.

The mill in question was originally a corn mill, but was converted into a scribbling mill about three years since.— Can any objection be raised to the prescription in the first Count on this ground? The mill in the second Count is described as an ancient water mill, without its being stated what particular kind of mill it was. Plaintiff rented the mill.

I think defendant needs only to plead the general issue of not guilty of the premises, on which he may give in evidence the whole of his defence; and if defendant did no more than take the water for the improvement of his land, as all former occupiers had done, I think that is a good answer on the merits. Or if the water was turned into its old course after it had run over defendant's land, so as to occasion

tion no real injury to plaintiff, or an injury so minute as that no person would complain of it. I think plaintiff would not be able to succeed in this action. The

objections to the form of the action will not, in my apprehension, be allowed to nonsuit the plaintiff.

Geo. Wood.

Hilary Term, 29. Geo. III.

Declaration by mortgagee for 1000 years against defendant for pulling down a cottage which was in the possession of two tenants per quod plaintiff's reversionary interest was much damaged.

SUFFOLK, to wit. J. R. complains of R. F. and R. K. being, &c.; for that whereas the said plaintiff, on, &c. and before was, and from thence hitherto hath been, and still is possessed of and in, and entitled to a certain cottage, with the appurtenances, situate, standing, and being in A. in the said county of S. for the residue and remainder of a certain term of one thousand years, commencing on the seventeenth of September 1777, from thence unto the full end and term of one thousand years, part of which said cottage, with the appurtenances, on, &c. and continually from thence until and at the time of committing the grievance hereinafter mentioned, was in the possession and occupation of one T. S. as tenant thereof to the said plaintiff, *and the residue of the said cottage on, &c. and from thence continually until and at the time of the committing of the grievance hereinafter next mentioned, and afterwards, was in the occupation and possession of one W. D. as tenant thereof to the said plaintiff so being possessed and entitled as aforesaid; yet the said defendants, well knowing the premises, but contriving and wrongfully and maliciously intending to injure the said J. R. with respect to his reversionary interest in the said cottage, and to diminish and lessen thereof as aforesaid, whilst the said plaintiff was so possessed and entitled to the said premises as aforesaid, and the said T. S. and W. D. were so respectively possessed thereof as aforesaid, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting the bill of the said plaintiff, at, &c. in, &c. wilfully, wrongfully, and injuriously, and without the licence and consent, and against the will of the said plaintiff, broke down, pulled down, prostrated, broke to pieces, spoiled, and destroyed the roof, walls, doors, door posts, windows, window frames, ceilings, wainscotings, and floors of divers rooms of that part of the said cottage in the possession and occupation of the said T. S. to wit, twenty square yards of, &c. and the materials thereof coming, of great value, to wit, of the value of two hundred pounds, took and carried away, and caused and procured to be taken and carried away and converted and disposed thereof to their own use, whereby not only the said part of the said cottage in the possession and occupation of the said T. S. was wholly destroyed, but also the remaining part of the said cottage in the possession and occupation of the said W. D. became and was thereby greatly shook, weakened, damaged, ruinous, and impaired, and of no value, and the said plaintiff by means of the premises became, and was, and still is greatly injured and damnified in his reversionary interest of and in the whole of the said cottage, and the same is greatly lessened and diminished in value, to wit, at, &c. in, &c.: And whereas, &c.*

[second

[second Count same as first, only stating T. S. to be sole tenant of the cottage by omitting what is in *Italic*]: And whereas, &c. [Count in trover for the materials.]

Drawn by Mr. J. GRAHAM.

Trinity Term, 27. Geo. III.

MATTINSON } WESTMORLAND, to wit. Robert Wil- Declaration a-
against } son, late of, &c. was attached to answer John gainst defendant
 WILSON. } Mattinson the younger of a plea of trespass on the for digging
 case; and whereupon the said John, by A. B. his attorney, com- turfs and peats
 plains; for that whereas the said John, on the first of January on a piece of
 1782, long before, was, and continually from thence hitherto ground whereon
 hath been, and still is lawfully possessed of and in a certain ancient plaintiff was en-
 messuage, with the appurtenances, situate, lying, and being at titled to com-
 Longsledale aforesaid, in the parish of Kirby Kendal, in the said mon of turbary
 county of Westmorland, and by reason of his possession thereof in right of a
 during all the time aforesaid of right had, and ought to have had, messuage, and
 and still of right ought to have common of turbary in and upon carrying them
 a certain large piece or parcel of ground called Gander Barrow, away, and con-
 otherwise Beddal Forest, in the parish of Kirby Kendal aforesaid, verting, &c. *per*
 in the said county of W. to wit, to dig and take turf and peat *quod* plaintiff
 in and upon the said piece or parcel of ground for necessary fuel could not enjoy
 to be spent, burnt, and consumed in the said messuage of the said his said common
 John every year and at all times of the year, as occasion required, of turbary in so
 as to the said messuage, with the appurtenances, belonging and ample a manner
 appertaining; nevertheless the said Robert, well knowing the pre- as he ought to
 mises, but wrongfully contriving and intending to injure the said have done.
 John in this behalf, and to deprive him of the benefit and en-
 joyment of his said common of turbary, whilst the said John was
 so possessed of his said messuage, with the appurtenances, to wit,
 on the said first of January 1782, and on divers other days and
 times between that day and the day of suing forth the original
 writ of the said John, wrongfully and injuriously dug and cut, and
 caused and procured to be dug and cut divers large quantities of
 peats and turfs, to wit, five thousand cart loads of peats, and
 five thousand cart loads of turfs, upon, from, and off the said
 piece or parcel of ground, and took, carried away, sold, and dis-
 posed of the same to divers persons to the said John unknown,
 whereby the said John, during all the time aforesaid, could not
 have or enjoy his said common of turbary in and upon the said
 piece or parcel of ground in so ample and beneficial a manner as he
 ought of right during all that time to have had and enjoyed the
 same, but the said John during all that time was wrongfully hindered
 and deprived of great part of the benefit, profit, and advantage
 arising to him therefrom: And whereas also the said John, on the
 said first of January 1782, and long before was, and continually
 from thenceforth hitherto hath been, and still is possessed of and in
 a certain other messuage, and divers, to wit, fifty acres of land,
 with the appurtenances, situate, lying, and being at Longsledale
 aforesaid,

aforesaid, in the parish of Kirby Kendal aforesaid, in the county aforesaid, and the said John, by reason of his possession of the said messuage and land last mentioned, with the appurtenances, during all the time last aforesaid, had, and of right ought to have had, and still of right ought to have common of pasture in, upon, and throughout a certain other large parcel of ground called Gander Barrow, otherwise Beddal Forest, situate, lying, and being at the parish of Kirby Kendal aforesaid, in the said county of Westmorland, for his cattle in manner following, that is to say, fourteen cattle-gates, or rights of pasture of cattle, to be computed, used, and enjoyed as follows, that is to say, the pasturage of one bull, cow, ox, or heifer of one year, except oxen bred upon other places than the said last-mentioned messuages or tenement of the said John, and certain other tenements and parcels of tenements in Longsledale aforesaid, which were heretofore customary tenements held of the manor of Longsledale aforesaid, in the said county, or the pasturage of one horse, mare, or gelding under the age of one year, or of eight sheep, to be computed, used, and enjoyed as one cattle-gate, and the pasture of one horse, mare, or gelding of greater age than the age of one year to be accounted, used, and enjoyed as two cattle-gates, and also common of pasture for one work horse, the said several cattle-gates and common of pasture for one work horse to be used and enjoyed from the first of May until the twenty-ninth of September in every year, and also common of pasture for twenty-eight lambs from the fifteenth of August to the twenty-ninth of September in each and every year, as to the said last-mentioned messuage and land of the said John, with the appurtenances, belonging and appertaining; nevertheless the said Robert, well knowing the premises last aforesaid, but wrongfully and injuriously contriving and intending to injure the said John in this behalf, and to deprive him of great part of the profit, benefit, and enjoyment of his said common of pasture, afterwards, and whilst the said John was so possessed of his said last-mentioned messuage and land, with the appurtenances, as aforesaid, and entitled to the said common of pasture as aforesaid, to wit, on the said first of January 1782, and on divers other days and times between that day and the day of suing forth the original writ of the said John, wrongfully and injuriously dug up, cut up, and pared off, and caused to be dug, cut up, and pared off divers large quantities of the turf, earth, peat, soil, and surface of the last-mentioned parcel of ground called G. B. otherwise B. Forest, to wit, five hundred cart loads of turf, five hundred cart loads of earth, five hundred cart loads of peat, five hundred cart loads of soil, and five hundred perches of surface of the same parcel of ground, and took and carried away the same; whereby the said J. could not have and enjoy his said common of pasture at and during the several times and in manner in that behalf above mentioned in and upon the said parcel of ground in so ample and beneficial a manner as he ought of right to have had and enjoyed the same, and the said John hath been wrongfully hindered and deprived of great part of the

the benefit, profit, and advantage thereof, to wit, at the parish of Kirby Kendal aforesaid, in the said county: And whereas also the said John, on the first of January 1782, and long before, was, and continually from thenceforth hitherto hath been, and still is lawfully possessed of and in a certain other messuage, and divers, to wit, fifty other acres of land, with the appurtenances, situate, lying, and being at Longsledale aforesaid, in the parish of Kirby Kendal aforesaid, in the county aforesaid, and the said John, by reason of his possession of the said last-mentioned messuage and land, with the appurtenances, during all the time last aforesaid, had, and of right ought to have had, and still of right to have common of pasture in, upon, and throughout a certain other large parcel of ground called Gander Barrow, otherwise Beddal Forest, situate, lying, and being at the parish of Kirby Kendal aforesaid, in the said county of Westmorland, for his cattle levant and couchant in and upon his said last-mentioned messuage and land, with the appurtenances, in manner following, that is to say, fourteen cattle-gates, or rights of pasture for cattle levant and couchant in and upon the said last-mentioned messuage and land of the said John, with the appurtenances, to be computed, used, and enjoyed as follows, that is to say, the pasturage of one bull, cow, ox, or heifer of the age of one year, except oxen bred upon other places than the said last-mentioned messuage or tenements of the said John, and certain other tenements and parcels of tenements in Longsledale aforesaid, which were heretofore customary tenements held of the lord of the manor of Longsledale, in the said county of W. or the pasturage of one horse, mare, or gelding under the age of one year, or of eight sheep levant and couchant in and upon the last-mentioned messuage and land of the said John, to be computed and enjoyed as one cattle-gate, and the pasturage of one horse, mare, or gelding of greater age than the age of one year to be accounted, used, and enjoyed as two cattle-gates, and also common of pasture for one work horse levant and couchant in and upon the said last-mentioned messuage and land of the said John, with the appurtenances, the said several cattle-gates and common of pasture for the said work horse to be used and enjoyed from the first of May until the twenty-ninth of September in every year, and also common of pasture for twenty-eight lambs levant and couchant in and upon the said last-mentioned messuage and land of the said John, with the appurtenances, from the fifteenth of August to the twenty-ninth of September in each and every year, to the said last-mentioned messuage and land of the said John, with the appurtenances, belonging and appertaining; nevertheless, &c. &c. [gravamen same as in second Count, and so on to the end]: And whereas also the said John, on the first of January 1782, and long before, was, and continually from thence hitherto hath been, and still is lawfully possessed of and in a certain other messuage, and divers, to wit, fifty acres of land, with the appurtenances, situate, lying, and being at Longsledale aforesaid, in the parish of Kirby Kendal aforesaid, in the county of W.

2d Count, for digging turf, earth, peat, soil, and surface on a piece of ground whereon plaintiff had a right of common for his cattle, per quod, &c.

3d Count.

aforesaid,

aforesaid, and by reason of his possession thereof the said John, for all the time last aforesaid, of right had, and during all the time last aforesaid ought to have had, and still of right ought to have common of pasture for all his cattle levant and couchant in and upon the said last-mentioned messuage and land, with the appurtenances, in, upon, and throughout a certain other large parcel of ground called Gander Barrow, otherwise, &c. in the parish, &c. every year and at all times of the year, as to the said last-mentioned messuage and land, with the appurtenances, belonging and appertaining; nevertheless, &c. &c. [gravamen same as in second Count, and so on to the end of the Count]; whereupon the said John says he is injured, and hath sustained damage to the value of five hundred pounds; and therefore, &c.



A. CHAMBER.

Counts against defendant, for suffering premises to be out of repair, &c.

FOR that whereas the said Thomas heretofore, to wit, on the first day of January, in the year 1786 aforesaid, and long before, and from thence until and at the times of the several grievances in this Count mentioned, was in the possession and occupation of a certain other farm consisting of a messuage or dwelling house, and other buildings, and of divers closes and parcels of land, situate, lying, and being within the said parish of M. in the said county of H. with the appurtenances, and during all that time held and occupied the same as tenant thereof to the said L. T. by virtue of a certain demise thereof before then made to the said Thomas by the said L. T. to whom the reversion thereof, during all the time last aforesaid, belonged, under certain terms and conditions stipulated between them; and the said Thomas afterwards, to wit, on the said tenth of October now last past, † (at which time the said demise thereof became and was ended and determined), duly surrendered and yielded up the said farm to the said L. T. to wit, at the parish aforesaid; yet the said Thomas, contriving and maliciously intending to aggrieve the said L. T. in this behalf, and to injure him in his reversionary estate and interest of and in the said farm, with the appurtenances, whilst he so held and occupied the same as aforesaid, to wit, on the day and year first above-mentioned, and from thence until the time of his surrendering the said farm as aforesaid, wrongfully and injuriously permitted and suffered the roof of the said messuage and other buildings respectively to be greatly out of repair, whereby the floor, beams, and other timbers of and belonging to the said messuage and other buildings became rotten and decayed; and the said Thomas, on divers days and times during the time aforesaid, wrongfully and injuriously broke to pieces and destroyed divers, to wit, two hundred panes of the glass windows of the said messuage, the said glass windows being in, and part, and parcel of the same messuage, and affixed to the freehold thereof, and the said Thomas, on divers days and times during that time, wrongfully and injuriously felled, grubbed up, and destroyed divers trees, to wit, five hundred oaks, five hundred alders,

ashes, five hundred elms, and five hundred other trees, at those times respectively growing upon the said farm, and of a large value, to wit, of the value in the whole of one hundred pounds of lawful, &c.; and wrongfully and injuriously lopped, topped, and caused and procured to be lopped and topped divers other timber trees, to wit, five hundred other oaks, five hundred other ashes, five hundred other elms, at those times respectively growing upon the said farm, and took and carried away the timber and wood, to wit, five hundred cart loads of timber, and five hundred cart loads of wood coming of the said several trees so felled, grubbed up, lopped, and topped as aforesaid, being of a large value, to wit, of the value of one hundred pounds of like, &c. and converted and disposed of the said timber and wood to his own use; and also on divers other days and times aforesaid, during the time aforesaid, wrongfully and injuriously caused and procured divers cattle, to wit, twenty horses, twenty cows, and two hundred sheep to be turned into certain woods, parcel of the said last-mentioned farm, and to feed, browse upon, tread down, cut, consume, and spoil the trees, germins, and shoots there then growing; by means and in consequence of which said several premises the said L. T. became and was greatly injured in his reversionary estate and interest of and in the said farm, with the appurtenances: And ^{2d Count, cutting timber,} whereas, &c. (same as the first Count to this mark ‡, then as follows); at which time the said demise of the said last-mentioned farm became and was ended and determined, duly surrendered and yielded up the same to the said L. T. to wit, at the parish aforesaid; and although according to the terms and conditions of the said last-mentioned demise the said Thomas, during the continuance thereof, ought not have felled, cut down, or destroyed any of the oaks, ashes, elms, or pollards, or any of the young heirs, stemmers, or standlings growing upon the said last-mentioned farm, or to have lopped or topped the same or any or either of them; yet the said Thomas, contriving and maliciously intending to aggrieve the said L. T. in this behalf, and to injure him in his reversionary estate and interest of and in the said last-mentioned farm, with the appurtenances, whilst he so held and occupied the same as aforesaid, to wit, on the said first day of January, in the year of Our Lord 1786 aforesaid, and on divers other days and times between the said day and the time of his surrendering the said last-mentioned farm as aforesaid, wrongfully and injuriously felled, cut down, and destroyed divers oaks, ashes, elms, pollards, stemmers, and standlings, to wit, five hundred oaks, &c. &c. at those times respectively growing upon the said last-mentioned farm, and of a large value, to wit, of the value in the whole of one hundred pounds of lawful, &c. wrongfully and injuriously lopped and topped, and caused and procured to be lopped and topped divers other oaks, &c. to wit, five hundred other oaks, &c. at those times respectively also growing upon the said last-mentioned farm, and took and carried away the timber and wood, to wit, five hundred cart loads, and five hundred cart loads

loads of wood coming off the said several trees so felled, cut down, destroyed, lopped, and topped as last aforesaid, being of a large value, to wit, of the value of one hundred pounds of like, &c. and converted and disposed of the said last-mentioned timber and wood to his own use; and although, according to the terms and conditions aforesaid, it was incumbent on the said Thomas, during the continuance of the said last-mentioned demise, from time to time as occasion required, at his own costs and charges, to have well and sufficiently repaired, amended, hedged, ditched, cleansed, and scoured the said messuage and buildings, and the hedges, ditches, fences, gates, bars, and posts respectively belonging to the said last-mentioned farm, in, by, and with all manner of needful and necessary reparations and amendments whatsoever, and so to have left and yielded up the same to the said L. T. at the determination of such demise, (the said Thomas to be allowed rough timber by the assignment of the said L. T. and to take upon the said last-mentioned farm sufficient frith for the fences thereof); and although the said Thomas could and might always, during the continuance of the demise of the said last-mentioned farm, have taken sufficient frith upon the same for repairing the fences thereof, and the said L. T. was always, during the continuance of such demise, ready and willing to have assigned to the said Thomas sufficient rough timber for the other repairs necessary to be done upon the said last-mentioned farm; yet the said Thomas, contriving and maliciously intending as aforesaid, did not nor would from time to time as occasion required, during the continuance of the said last-mentioned demise, repair, amend, hedge, ditch, cleanse, and scour the said messuage, buildings, hedges, ditches, fences, gates, bars, and posts respectively belonging to the said last-mentioned farm, but on the contrary thereof, the said Thomas, whilst he so held and occupied the said last-mentioned farm as aforesaid, to wit, on the said first day of January, in the year of Our Lord 1786 aforesaid, and from thence until the time of the surrendering the same as aforesaid, wrongfully and injuriously permitted and suffered the said last-mentioned messuage and buildings to be ruinous and in great decay in the respective walls, roofs, ceilings, joists, rafters, beams, timbers, floors, wainscots, partitions, doors, windows, window-frames, pavements, and other parts and particulars thereof, and during the time last aforesaid, wrongfully and injuriously permitted and suffered the hedges, fences, gates, bars, and posts, to wit, two hundred perches of the hedges, two hundred perches of the fences, one hundred gates, one hundred bars, and one hundred posts, belonging to the said last-mentioned farm to be prostrate, ruinous, and fallen down, and the ditches, to wit, two hundred perches of the ditches belonging to the same, to be foul and choaked up for want of necessary repairing, amending, hedging, ditching, cleansing, and scouring the said last-mentioned messuage, buildings, hedges, ditches, fences, gates, bars, and posts respectively; and by reason of the said defects and want of reparations in the said

hedges,

hedges, fences, and gates, divers cattle, to wit, twenty horses, twenty cows, and two hundred sheep, during the continuance of the said last-mentioned demise, escaped and strayed into certain woods, parcel of the said last-mentioned farm, and ate, browsed upon, trod down, consumed, and spoiled the trees, germins, and shoots there then growing; by means and in consequence of which said several premises in this Count mentioned, the said L. T. became and was greatly injured in his reversionary estate and interest of and in said last-mentioned farm, with the appurtenances: And whereas the said L. T. afterwards, to wit, on the thirtieth day of September, A. D. 1789, at the parish aforesaid, was lawfully possessed of the trees, goods, and chattels following, that is to say, five hundred oaks, five hundred ashes, five hundred elms, five hundred other trees, five hundred cart loads of timber, five hundred cart loads of wood, five hundred cart loads of underwood, and five hundred cart loads of the loppings and toppings of trees, of a large value, to wit, of the value of one hundred pounds of lawful, &c. as of his own property; and being so thereof possessed, the said L. T. afterwards, to wit, on the day and year last aforesaid, at the parish aforesaid, casually lost the said trees, goods, and chattels out of his custody and possession, and the same afterwards, to wit, on the day and year last aforesaid, came to the hands and possession of the said Thomas by finding; yet the said Thomas, well knowing the said trees, goods, and chattels to be the property of the said L. T. and of right to belong and appertain to him, but contriving and wrongfully intending craftily and subtilly to defraud and injure the said L. T. in this behalf, hath not, although often requested, delivered the same or any part thereof to the said L. T. but on the contrary the said Thomas afterwards, to wit, on the day and year last aforesaid, at the parish aforesaid, converted and disposed thereof to his own use; to the damage of the said L. T. of five hundred pounds; and therefore he brings his suit, &c. Pledges, &c.

3d Count, trover, for trees cut.

S. MARRYAT.

And the said Thomas, by Robert Blake his attorney, comes Plea, not guilty. and defends the wrong and injury, when, &c. and says, that he is not guilty of the premises above laid to his charge, in manner and form as the said L. T. hath above thereof complained against him; and of this he puts himself upon the country, &c.

I N D E X.

GENERAL DIVISIONS OR HEADS, AND LEADING TITLES IN THE CIVIL DIVISION,

T O R T.

A N A L Y S I S.

I. TORT. To PERSONS. By

1. DEFAMATION, and

1. Words spoken of Felony.

1. Inducing Corporal punishment.

2. Of Infectious Diseases.

3. Of Plaintiff in his Profession.

4. Business,

5. Trade,

6. Office,

7. In a particular and oblique Manner.

(1)

attended with Special Damage.

2. LIBELS, or 1. Words Written.

2. Paintings,

3. { Pictures, and

3. { Hanging in Effigy, &c. } (2)

3. SCANDALUM MAGNATUM.

4. MALICIOUS PROSECUTION.

1. Of Civil Suits.

1. Maliciously holding to Bail.

2. Suing out Commission of Bankruptcy.

3. Detaining in Custody.

4. Habeas Corpus.

5. Extent in aid, &c.

(3)

2. Criminal Suits or Charges,

1. Of Arson.

2. Bigamy.

3. Felony and Larceny.

4. Forcible Entry.

5. Perjury

6. Information before
Commissioners of
Excise, &c.

before a
Magistrate
and
preferring
Indict-
ments for.

(4)

H. To

II. TO PERSONAL PROPERTY.

NEGLIGENCE, NONFEASANCE, and MISFEASANCE.

1. By Excessive Distress. (5)

2. Immoderate Use of Horses, Cattle, and Goods, lent and let to hire. (6)

3. Keeping Dogs and other noxious Animals, accustomed to bite Mankind, Sheep, &c. (7)

4. Pound Breach and Rescue of Distresses for Rent.

Damage Feasant. } (8)

for Rescue of Prisoners.

and for not releasing Goods when replevied.

5. TROVER. (9)

Other Injuries to Personal Property, not classed, } (10) & (25)

And the Consequences of Public Nuisances. } (See post.)

III. OF A MIXED NATURE, (partly relating to Persons and partly to Personal Property.) (11)

(MISFEASANCE.)

For, 1. DECEIT and on WARRANTY in the Sale of Cattle or goods, &c. (12)

2. Criminal Conversation, and seducing, and harbouring.

1. Men's Wives.

2. Daughters.

3. Apprentices.

4. Journeymen.

Assaulting and beating them,
per quod servitium amittit,
and other similar Injuries.

} (13)

3. Exercising Trades and exclusive Privileges.

4. Imitating and pirating Inventions, Copyrights.

5. Against Sheriffs

their Bailiffs, &c. }

for

1. Escape.

2. False Return.

3. Taking insufficient Bail.

Pledges in Re-

plevied

Bail contrary to

the Statute. }

(14)

4. Extortion.

5. Selling Goods taken in

Execution after the

Debt satisfied, &c.

6. Against other Officers acting in a public ministerial Capacity, such as

1. Attornies.

2. Justices of the Peace.

3. Custom House Officers.

4. Excise Officers.

5. Returning Officers (to serve in Parlia-
ment), Mayors of Boroughs, &c.

} (15)

7. Against other Persons (not Officers) in Characters and Employments recognized by the Law,

As 1. Carriers

As 1. Carriers,

By 1. Land, } (16) { See NEGLIGENCE, by Owners
2. Water. } and Masters of Ships.

2. Farriers.

3. Innkeepers, Livery Stable Keepers.

4. Surgeons, Man-Midwives, Midwives.

8. Persons, other than the foregoing, and other Misfeasances
and Torts not reducible to any of the foregoing
Heads under NONFEASANCE and NEGLIGENCE,

in

1. Navigating Ships.

2. Driving Carriages.

3. Performing Works, Duties, &c.

4. Not repairing Fences. } See Torts to cor-

5. Not carrying away Tithes. } poreal Rights, *post* }

IV. TO REAL PROPERTY. (See NONFEASANCE, NEGLIGENCE.)

1. By Disturbance of

INCORPOREAL RIGHTS. }

1. Common of Pasture,

2. Turbary, &c.

3. Estovers.

2. Fairs.

3. Offices.

4. Seats in Churches.

5. Ways.

6. Other Rights, Franchises,

&c. as,

Tolls,

Ferries, &c. }

V. CORPOREAL RIGHTS.

For Nuisances and other Injuries in Nature thereof,

to

1. Lands, Houses, &c. in Possession, } (20)
Reversion. }

2. Houses and Lights. (21)

3. Water-courses. (22)

3. In Nature of Waste, and for DILAPIDATIONS. (23)

For not repairing Fences, &c. } (24)
carrying away Tithes. }

And Consequences of Public Nuisances. (25)

I. TO PERSONS.

1. BY DEFAMATION. WORDS SPOKEN, WORDS OF } (1)
 FELONY—FORGERY—MURDER—SODOMY. }
 2. LIBEL.
 3. SCANDALUM MAGNATUM.

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229. Declaration for words of *forgery*, robbery, embezzlement of money from one with whom plaintiff was clerk; with *special damage* laid.
 233. For words of felony spoken of a servant by his master.
 236. Plea of justification as to some counts, that the words
 238. are true, and that plaintiff confessed. Replication, *de injuria*. Continuance. Postea, where plaintiff makes default.
 243. For words of felony and larceny.
 246. For words of sodomy.
 271. For words spoken of plaintiff, that he had been guilty of *forgery*, and that money had been given to prevent his being prosecuted for it.
 272. Declaration for raising a report that plaintiff had *murdered* defendant's child.

INDUCING CORPORAL OR INFAMOUS PUNISHMENT—ARSON—ADULTERY—PERJURY—RECEIVING STOLEN GOODS—SWINDLING.

256. For words of *arson*, burning houses, &c. to defraud insurance fire office, maliciously charging plaintiff with same before a magistrate.
 262. Declaration at the suit of *husband* and *wife*, for words of *adultery* spoken of plaintiff's wife, and slander.
 268. Declaration for words of *perjury* in an affidavit made by plaintiff relative to defendant, who had given notice of his becoming bail for a woman who stood indicted for a fraud.
 273. For accusing plaintiff of perjury.
 274. Declaration in B. R. for accusing plaintiff of *arson*, and also saying that he kept a lady, whereby plaintiff, who was about to be married, lost his marriage.
 293. Declaration for words concerning a bill of exchange drawn in Maryland, which defendant was to have accepted, but that he refused so doing; assigning a reason in writing, that plaintiff had procured it through means of *perjury*, and that he was then under prosecution for the offence.
 295. Declaration for words spoken of plaintiff, a *bargemaster*, insinuating his having *purchased stolen goods*, knowing them to be so; *per quod*, some of his customers desisted having any further dealings with him.
 345. For words of perjury.

339. For

IN THE CIVIL DIVISION.

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339. For saying of plaintiff, who was a *lottery-office keeper*, with having *swindled* defendant out of a share of a lottery ticket.

INFECTIOUS DISEASES.

251. Declaration against husband and wife, for words spoken by defendant's wife of a woman (French pox), whereby marriage lost.

IN A PROFESSION—ATTORNEY—CLERGY.

240. Declaration for words, imputing dishonesty spoken of an *attorney* in his *profession*, whereby he lost his clients.
277. Declaration in B. R. for words spoken of a *clergyman*, to wit, that he was no clergyman, whereby he lost occasional duty.
286. Declaration by *bill of privilege* against defendant, for words spoken of plaintiff, who was an *attorney*, and had brought an action for one A. B. since deceased, against C. D. who had been surrendered, and since superseded, for saying, "that the discharge of C. D. was a contrived thing, and that plaintiff took a bribe. Plea, not guilty, and issue.
290. Declaration for words of perjury (spoken of an *attorney*) on a taxation of costs, and dishonesty in his profession.

BUSINESS OR CALLING—SURVEYOR—SCHOOLMASTER.

264. Declaration for words of felony, and spoken of a *surveyor* in his business.
282. Declaration for words spoken by defendant's wife against the plaintiff and his wife, *who kept a school*, whereby they lost several of their scholars. Plea 1st, not guilty; 2d, that the plaintiff is an improper person to keep a school. Replication, *de injuria*, &c.

TRADE—WORDS OF BANKRUPTCY—CHEESEMONGER—ALE-HOUSE-KEEPER.

232. Declaration in B. R. for words of bankruptcy, spoken of a *cheesemonger*.
291. Declaration in B. R. for words spoken against plaintiff, (who kept a public-house) by defendant, saying, "that he mixed the porter he sold with four small-beer, &c."
247. Declaration in B. R. for words of insolvency and bankruptcy, whereby defendant gained several of plaintiff's customers. Plaintiff was an inkmaker.

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IN AN OFFICE—OF JUSTICE OF THE PEACE.

280. Declaration for words spoken of a *justice* of the peace in his *office*, to wit, in passing the accounts of a surveyor of the highways.

WORDS ATTENDED WITH SPECIAL DAMAGE—LOSS OF MARRIAGE.

274. Declaration in B. R. against defendant, for accusing plaintiff of *arson*, and also saying that he kept a lady, whereby plaintiff, who was going to be married, lost his marriage.
253. Declaration in B. R. for words spoken, by which plaintiff lost the marriage of one woman, and having afterwards married another, her father would not give her any marriage portion.

2. LIBEL.

3. SCANDALUM MAGNATUM. } (2).

Words written, or printed and published—Defamation of Title.

297. Declaration by bill against an *attorney*, for *defamation* of plaintiff's *title* by *advertising*.
270. Plea of not guilty, and a special justification in an action for *defamation of title* by *advertisement*, and a confirmation of facts.
299. Declaration for a libel by *letter*, intimating plaintiff to be insolvent.
300. Declaration for a libel in a *newspaper* against plaintiffs, who were *coal merchants*, accusing them of selling coals short of measure, and that they took a sack of coals from a quantity that had been landed at the plaintiff's wharf, in order to their being carted to another place; and that on an action being brought, and a complaint made to a justice of the peace for the offences, they endeavoured to compromise the same. Plea, that the contents of the libel are true. Replication thereto, *de injuria sua*, &c. published the libel.
303.
304.
306. Declaration in C. B. for publishing a libel against plaintiff, a *curate*, whereby he was dismissed from his curacy.
307. Declaration in B. R. against an *attorney*, for publishing a libel, containing words of *perjury* of a *wine-broker*, thereby, &c. Plea, that the words written by defendant in a will which defendant prepared by order of testator, and on his retainer. Demurrer special.
309.

3. SCAN-

3. SCANDALUM MAGNATUM.

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PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

255. Declaration for *scandalum magnatum* of the first lord of the admiralty in his office, by way of libel in a public newspaper.
305. Declaration on a libel against one of the lords of the admiralty, privy counsellor, and gentleman of the bed chamber, importing, that by plaintiff's conduct he had displeased the king, published in a newspaper.

Words under all the preceding Heads.

- Declaration for words of a *member of parliament*, calling him *papist* and pensioner, - - - Mod. Ent. 203
- Declaration in an action for *scan. mag.* brought by a *peer*, - - - Ibid. 207
- Declaration for words spoken of a *candidate for member of parliament* before his election, - - - Ibid. 208
- Declaration in case by *husband and wife*, for charging the wife with *stealing* brandy, - - - Pl. Aff. 108
- Declaration for charging plaintiff with *perjury*, in giving evidence in a cause, whereby a rich lady, having before that charge contracted marriage with plaintiff, refused to marry him, - - - Ibid. 190
- Declaration for a *libel* in a public print, that defendant is a *swindler*. Plea, that plaintiff had been dishonestly concerned with a gang of swindlers, and been guilty of defrauding divers persons with whom he had transactions. *Special demurrer*, with causes, that defendant hath not set forth in *what manner* dishonestly concerned with swindlers, or shewn any *particular persons*, or in what *transactions*, or any day and time, and charges are so general and uncertain, that plaintiff cannot know *particular facts*, defendant will attempt to prove, and plaintiff not prepared to disprove them. Joinder, - - - 1. T. R. 748
- For words spoken of a justice of peace in execution of his office, - - - 2. Ld. Raym. 1369
- Declaration in tort for a *libel*, in maliciously swearing in an affidavit, that what plaintiff swore in his former affidavit was false, - - - 2. Burr. 807
- Count in a declaration in tort, for a libel on a foreigner of rank, that he was an *adventurer and gambler*, - - - 6. T. R. 162
- Declaration for *scan. mag.* of a *peer*, - - - Mor. Pr. 259
- Declaration on case on statute *scandalum magnatum*, - - - 2. R. P. B. R. 146
- Declaration in *scan. mag.* against a *peer*, accusing him of high treason, and being concerned in the Irish plot, - - - Lill. Ent. 494
- For asserting that plaintiff, (who was retained by the managers of a theatre in the Haymarket, to compose music and perform as a musician), had *exposed* the music, by which means he lost both his employments, - - - Mor. Pr. 309
- Declaration in case for speaking the following words of a member of parliament: "I expected to have met George Onslow, but find he is not here, for which I

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- am rather sorry, as I came here with an intention to have told him my opinion of him, if he would have waived his privilege I would have waived my gown. I know him very well, I have carried letters from Mr. Onslow to Mr. Wilkes, full of professions of friendship and service, *which were never kept*, nor indeed is it to be wondered at, since *it is notorious he never kept his word*, unless when his own interest was concerned. As to the instructing our members to obtain redress, I am totally against that plan, for *as to instructing Mr. Onslow, we might as well instruct the winds*; and should he even promise his assistance, I should not expect him to give it us." 2d Count, "As to instructing our members to obtain redress, I am totally against that plan, for *as to instructing Mr. Onslow, we might as well instruct the winds*, and should he even promise his assistance, I would not expect him to give it us." Action will not lie for these words, vide, - - - - 2. Wils. Rep. 153 to 159
- For slanderous words spoken of a *tradesman*, charging plaintiff with theft. *Special damage* laid, - - - - 2. R. P. C. B. 149
- Declaration for imposing the crime of arson upon plaintiff, and causing him to be examined before a justice of the peace: and for *words of felony*, charging plaintiff with *arson*, whereby he lost his insurance, - - - - Mor. Pr. 261
- For words of felony, - - - - *Ibid.* 271
- By an *innkeeper*, for *words, Welch and English*, charging plaintiff with *having foul discourse*, by which means plaintiff was expelled a society that allowed him five shillings per week during illness, and lost many of his guests, &c. - - - - *Ibid.* 274
- For words of a woman, that she had the French pox, whereby she lost her marriage, - - - - *Ibid.* 280
- For words of *perjury* in an affidavit made by plaintiff, relating to defendant, who had given notice of his intention to become bail for a woman who stood indicted for a fraud, - - - - *Ibid.* 286
- By one *surgeon* against another, the plaintiff *having set a bone*, the defendant laid *it was not well set*, and set it over again; also for defendant's intruding himself in the cure to plaintiff's prejudice, - - - - *Ibid.* 290
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- For words of an *apothecary* degrading him in his business, - - - - *Ibid.* 298
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- Plaintiff being a *plumber*, and having made a leaden pump, defendant wrote these words: "This is Shock Reed's cobbled work." Plaintiff's name was James Reed; he therefore makes an averment that he was known as well by the name of Shock as of James, - - - - *Ibid.* 305
- Declaration for scandalous words spoken of an *attorney*, charging him with perjury. Plea as to part, not guilty as to *rendue*; a suit brought by the defendant, stating the declaration; first issue; second issue; *verdict* awarded; *nisi*

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| For words spoken of a surveyor of the navy, whereby he lost his place, | <i>Ibid.</i> 79 |
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| Declaration in C. B. against a jurymen in a former suit, for charging a man with perjury in giving evidence therein, and the whole proceedings in that cause set out, | <i>Ibid.</i> 170 |
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- For words spoken to a riotous assembly, that plaintiff's house was a *bawdy-house*; *per quod*, house and goods were damaged, *Videan's Ent.* 44.
- Of *perjury*, where plaintiff sued defendant for a debt in the county court, where plaintiff waged his law, and thereupon defendant said he was perjured, *Her.* 211. *Rob. Ent.* 45. For words of *burning barrey*, 2. *Instr. Cl.* 42.
- By an officer in an office of great trust, for words of *deceit* in his office, *Winch. Ent.* 70.
- For saying, *that plaintiff advised and abetted tenants to pull down hedges*, where several persons had committed routs and riots in pulling down hedges, and defendant was examined before justices of the common pleas and at the assizes concerning the assizing, &c. *Rob. Ent.* 79. *Br. R.* 19. 2. *Instr. Cl.* 70. By a member of parliament, for saying he was a papist and pensioner, 2. *Went. Rep.* 263. By justice of peace for words of *deceit*, *Thomp. Ent.* 46. *Mod. Intr.* 30. For words of *forgery*, *Thomp. Ent.* 48. Words imputing *injustice* to plaintiff, *Rob. Ent.* 65. By one of the auditors, for charging him with *deceit in taking fees*, &c. *Winch. Ent.* 70.
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- By an attorney in C. B. for words, that he was *false and a double dealer*, took fees *both sides*, 1. *Brown. Ent.* 24. *Cl. Man.* 156.
- For words of *incapacity* and *unfitness*, &c. *Thomp. Ent.* 50. 2. *Mod. Intr.* 27. For words of *forgery*, 1. *Brown. Ent.* 65. 79. *Pl. Gen.* 25. 32. 35. For words of *knave-*

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T. seised of a manor of an annual value, and clear of incumbrances, sold to plaintiff, who in a conversation with L. on the part of R. about the sale, and defendant *said*, the title was defective, and that another had title, in whose name defendant entered into the manor, *Ra. Ent.* 594.

Plaintiff, seised of lands for his life and life of others, which he bargained to M. and defendant *said words*, for which M. refused to go on with his agreement, 3. *Br.* 112.

Plaintiff, seised in right of his wife of a manor and advowson by feoffment of R. who, by reason of the feoffment, was seised of other lands of which, &c. by the names of all the lands, &c. enfeoffed K. and others; and defendant says, that R.

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- For words of a virgin; *per quod*, &c. after verdict for plaintiff judgment was arrested, for that it was not alledged with whom, &c. 2. *Lut.* 1295.
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- Plea as to words, except the words of *perjury*, *non cul.*; and as to those that plaintiff committed perjury in deposition in the Star Chamber. Replication, *de injuriâ*, *Co. Ent.* 26.
- Plea to words of *subornation of perjury*; *prior action* for like words against defendant, who justified; and verdict and judgment was for defendant, *Her.* 151.
- Plea to words of an attorney, that plaintiff was presented by the oath of the attorney for *mal-practice*, and afterwards struck off the roll; *per quod*, he spoke the words. Replication, *de injuriâ*, &c.; and traverses being struck off the roll. Demurrer, *Ra. Ent.* 107.
- Plea, that defendant exhibited a bill in the Star Chamber against W. for keeping plaintiff and other *murderers* in his house; and traverses that he spoke the words in any other way. Demurrer, *Co. Ent.* 23.
- Plea to exhibiting a false petition to justices of peace against plaintiff, that petition was true, and he and others subscribed their names, and placed the common seal of the town. Demurrer, *Her.* 155.
- Plea, that *by agreement* he gave a ring to plaintiff in *satisfaction*. Replication, *null tiel agreement*, *Co. Ent.* 48.

4. MALICIOUS PROSECUTION.—(See *Infra.*)

1. Civil Suits.

- | | |
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| 1. Maliciously holding to Bail, | } (3). |
| 2. — Suing out Commission of Bankrupt, | |
| 3. — Detaining in Custody, | |
| 4. — Habeas Corpus, | |
| 5. Extent in Aid—See Index. | |

2. Criminal Charges.

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310. Declaration in C. B. against defendant, who had sued out a writ of *latitat* against plaintiff, and before the return of that writ had likewise sued out a *bill of Middlesex*, and arrested plaintiff upon the same; plaintiff paid the defendant, and procured his discharge; defendant afterwards arrested plaintiff by virtue of the *latitat*, and thereby put plaintiff to great expence.
313. Declaration in B. R. for maliciously suing out a *commission of bankruptcy* against plaintiff, who was a far-

mer,

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- mer, which was afterwards superseded; *per quod*, plaintiff was turned out of his farm, and his stock sold at an under value, and he entirely ruined.
319. Declaration in B. R. for suing a writ out of the marshal-
sea court maliciously, and *arresting* plaintiff.
341. Declaration for maliciously causing plaintiff to be *ar-
rested* after payment of the debt, by virtue of a writ
which had been sued out previous to such pay-
ment.
324. Declaration in B. R. for malicious prosecution of an *ex-
tent in aid* against defendant and another; *per quod*,
A. arrests him, B. *detains* him in custody, and C. seizes
his goods.
328. Declaration in B. R. for maliciously *arresting and hold-
ing plaintiff to bail* for eleven pounds and upwards,
where nothing was due from him to defendant, who
discontinued the suit.
330. Declaration in B. R. for *maliciously suing out an execu-
tion* upon a judgment entered up by a warrant of at-
torney given for that purpose, to secure the pay-
ment of a sum of money by instalments after the first
instalment was paid, and before the second became
due; with special damage.
336. Declaration in B. R. for maliciously holding to bail and
false imprisonment, by *procuring a detainer* against
plaintiff when in custody at the suit of defendant,
whereby those who would have bailed him refused.
363. Declaration in B. R. for *suing out a habeas corpus* direct-
ed to plaintiff, a *schoolmaster*, to bring up the body
of an infant under his tuition before the lord chief
justice, and thereby putting him to great expence.

2. Criminal Charges. (4).

Of Arson—Bigamy—Felony—Forcible Entry—Perjury—Before
a Magistrate—Commissioners of Excise—Preferring Indictments.

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256. Declaration for taking plaintiff up for *arson*, carrying
him before a justice of the peace, whereby plaintiff
lost his insurance.
316. Declaration for charging plaintiff with *arson*.
320. Declaration in B. R. for stopping and advertising silver
plates which plaintiff offered for sale to defendant,
and imposing the crime of *felony* on the plaintiff.
344. Declaration in B. R. for maliciously accusing plaintiff
of *felony*, and carrying him before a justice of the
peace, who committed him for re-examination, and
on such re-examination committed him for trial; and

after-

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- afterwards at the general quarter sessions *preferred an indictment* to the grand jury, who returned the same *not found*. Counts for imposing felony and larceny.
348. Declaration in B. R. for accusing plaintiff of *felony*, taking him up, carrying him before a magistrate, who committed him, *indicting him at the sessions*, on which indictment, upon trial at the Old Bailey, plaintiff was acquitted.
350. Declaration in C. B. for maliciously exhibiting an information against plaintiff before *commissioners of excise*.
352. Declaration in B. R. for maliciously charging plaintiff with having stolen a quantity of hay, and causing him to be apprehended and to give bail for his appearance at the quarter-sessions, and for *preferring a bill of indictment* against plaintiff, which jury returned *not found*.
322. Declaration in B. R. for maliciously charging plaintiff with *bigamy* before a justice of the peace, causing the justice to make out a warrant for apprehending plaintiff, and also another warrant for his commitment, and *preferring a bill* at the quarter sessions returned *not found*.
355. Declaration in B. R. for a malicious prosecution for a *forcible entry*, on which plaintiff was indicted and apprehended, and afterwards acquitted by a jury.
356. Declaration in B. R. for maliciously indicting plaintiff (an attorney) of *perjury*, in an affidavit made by him in support of his bill against one A. B. (against whom he had brought an action for the recovery of it), which, by rule of B. R. was referred to the master to be taxed, and the indictment removed by *certiorari* into B. R. where, upon trial, he was acquitted.
- Declaration for *splitting one* cause of action into *eleven* actions, and *arresting* plaintiff on each in an inferior court, -
- For maliciously causing plaintiff to be arrested in the marshalsea court, when after appearance plaintiff did not declare, -
- By an *attorney* in C. B. for causing a person to file a bill in chancery against him *without any reasonable cause*, -
- For maliciously *suing out a commission of bankruptcy* against plaintiff, -
- For maliciously *indicting* plaintiff for felony, -
- For maliciously *obtaining a justices warrant* against plaintiff, and taking him up for not obeying an order of *bastardy*, which order the plaintiff had obeyed, -
- For accusing plaintiff of felony, *carrying him before a justice*, who committed him, preferring a bill of indictment, which was returned *ignoramus*, -
- By an *attorney* of B. R. against defendant, for maliciously causing two people to give information before a justice, that

Mor. Pr. 400

Ibid. 402

Ibid. 405

Ibid. 406

Ibid. 410

Ibid. 413

Ibid. 415

plaintiff

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| plaintiff had shot a deer in Enfield Chase, and prosecuting the same before the justice, who acquitted plaintiff; by such prosecution plaintiff was put to expence, and trouble in performing journies, &c. | Mor. Pr. 419 |
| For suing the plaintiff maliciously <i>in an inferior court</i> , which had no jurisdiction of the cause, | 1. Wilf. Rep. 302 b. |
| For malicious prosecution on an indictment, | <i>Ibid.</i> 310 b. |
| For falsely and maliciously suing out a commission of bankruptcy, which was afterwards superseded, | <i>Ibid.</i> 145 b. |
| For indicting plaintiff's wife, a malicious prosecution, | 2. R. Pr. C. B. 153 |
| Bill by an <i>attorney</i> of B. R. against an <i>attorney</i> of C. B. for causing plaintiff to be arrested, contrary to his privilege, &c. on a <i>capias ad respondendum</i> at defendant's suit, | <i>Ibid.</i> 171 |
| Declaration in tort against a practitioner, for <i>suing out a writ</i> against the plaintiff in the name of C. K. without C. K.'s consent, | <i>Ibid.</i> 179 |
| For maliciously <i>holding plaintiff to bail</i> in the mayor's court of London for the pretended damage of one thousand pounds, and afterwards discontinuing his suit, | Lill. Ent. 15 |
| For maliciously holding plaintiff to bail in the mayor's court of Maidstone, without any cause of action, | <i>Ibid.</i> 23 |
| For <i>maliciously arresting plaintiff</i> in the sheriff's court of London, where the cause was afterwards removed into B. R. and the plaintiff consulted for not declaring, | <i>Ibid.</i> 35 |
| Declaration in marshalsea court for <i>indicting plaintiff for a riot</i> , which was returned <i>ignoramus</i> , | <i>Ibid.</i> 62 |
| For a malicious indictment at the sessions, | PL. AFF. 159 |
| Declaration for arresting and holding defendant to special bail, in a case where no special bail required by the course of the court, | 1. Ld. Raym. 503 |
| For maliciously causing the plaintiff <i>to be imprisoned</i> and indicted for a felony, | Mod. Ent. 160 |
| Declaration in the exchequer, for maliciously charging plaintiff with disobedience of orders as captain of a ship of war, for laying him under an arrest, and confining him an unreasonable time without bringing him to a court martial, and afterwards bringing him to a court martial, at which he was honourably acquitted. Plea, general issue. This action will not lie, vide, | 1. T. R. 493 |
| Tort, for maliciously suing in palace court at Westminster, | Com. Rep. 190 |
| Declaration against <i>man and his wife</i> by an <i>infant</i> by <i>her next friend</i> , on a malicious indictment <i>at the assizes</i> for felony, on which plaintiff was bailed out of prison on commitment. | |
| 2d Count, for imposing the crime of felony generally, and indicting upon it. 3d Count, for imposing the crime of felony only, | PL. AFF. 160 |
| Declaration against defendant, for a malicious prosecution <i>at the assizes</i> , for charging plaintiff with robbing him on the highway, of which indictment plaintiff was acquitted, | <i>Ibid.</i> 166 |
| For a malicious indictment, charging plaintiff with <i>stealing</i> pigs which he bought of defendant. 2d Count, for im- | posing |

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| posing the crime of felony upon him, and afterwards indicting him at one assizes, whereof he was acquitted at another. 3d Count, differing from the former, | Pl. Aff. 108 |
| Declaration in B. R. for a malicious prosecution at the quarter sessions of the peace, for an assault, of which plaintiff was acquitted, | Ibid. 222 |
| Declaration for indicting plaintiff for <i>stealing</i> three pigs which he bought of defendant, | Ibid. 262 |
| Declaration in B. R. for obliging plaintiff to <i>put in excessive bail</i> to two actions in C. B. where he had paid the greatest part of the sum; recites how indebted and how paid, | Ibid. 277 |
| For maliciously and falsely procuring a man to be indicted for a riot. Plea, not guilty, | 1. Ld. Raym. 374 |
| For arresting defendant, and <i>holding him to bail</i> on mesne process, when no bail was required by law, | Ibid. 503 |
| For maliciously holding to bail for forty pounds, when sum due was under ten pounds, | Mod. Ent. 198 |

Malicious Prosecution under all preceding Heads.

For malicious prosecution, and taking plaintiff upon a writ of *ca. sa.* in the name of another without any warrant, *Br. R.* 47. (See Torts by and against Attornies for Malicious Prosecution.)

For arresting plaintiff in the city court without any cause of action, 1. *Bro. Ent.* 36. Similar, where the court had no jurisdiction, &c. *Clif.* 35. Similar, according to the custom of the realm, *Ibid.* 35. Similar, for detaining plaintiff in prison till he found bail, *Br. R.* 61. *Clif.* 34. Similar, on process out of B. R. *Brown's M. N.* 25. Similar, on a writ out of C. B. and process out of an inferior court at the suit of defendant, without any cause of action, *Thomp. Ent.* 72. Similar, on a caption out of C. B. and also of a bill at suit of defendant, *Br. R.* 50. For malicious prosecution in court of principality of Wales, *Rob. Ent.* 16.

For attaching plaintiff by his goods in inferior court at the suit of R. without R.'s consent, *Hanf. Ent.* 53.

By an attorney against defendant, who impleaded him before commissioners concerning ecclesiastical causes and undue exercise of his office of an attorney, *Cl. Aff.* 255. Similar, for suing him in court christian without cause, *Clif.* 34. For that defendant caused plaintiff, by scandalous reports, to be arrested in London, *Cl. Aff.* 213. For that defendant maliciously sued out a writ of *ca. sa.* in the name of another, without any warrant, *Br. R.* 47. For pronouncing plaintiff to be excommunicated without any reasonable cause, *Clif.* 33.

For charging plaintiff with a *felony*, taking him before a magistrate, and detaining till he found bail to appear at the next sessions, where he was discharged by proclamation, *Rob. Entr.* 339. *Vidian's Ent.* 145.

By a king's messenger, for a false and scandalous petition exhibited against him to the justices at sessions, and by them sent to the king's privy council, *Rob. Ent.* 72.

For a doctor of laws and official principal to the bishop of L. for a false and scandalous petition preferred to a committee in parliament, *Vidian's Ent.* 35. For printing and publishing a petition, 1. *Sand. Rep.* 120.

By an attorney, for false articles exhibited against him in chancery, whereupon, on

- the oath of defendant, a writ issued out of B. R. for good behaviour; defendant was thereupon arrested, *Rob. Ent.* 75.
- For felony, charged before a magistrate at Westminster, 1. *Brown's Ent.* 76.
- By a counsellor at law, for a scandalous libel, 2. *Bro.* 22.
- For an information for perjury in B. R. *Cliff.* 25. For an information against plaintiff, for riotously assembling with others, and unlawfully beating defendant, &c. *Ibid.* 27.
- For charging plaintiff with a felony, and procuring him to be indicted upon defendant's oath, to which plaintiff pleaded, and was acquitted, *Thomp. Ent.* 43.
- Similar, by an attorney, *Wi. Ent.* 74. *Br. R.* 22. Similar, for being the accessory to a felony, *Thomp. Ent.* 35. For charging plaintiff with felony, and indicting him in Middlesex, 1. *Brown. Ent.* 3. *Re. Dec.* 105. 131. *Clif.* 29. Similar, at the assizes, and no bill found, 2. *Brown. Ent.* 17.
- For preferring an indictment of felony against plaintiff at the general sessions, and holding him to bail to appear at assizes, and there acquitted of the felony, *Winch. Ent.* 74.
- For conspiring with others, causing plaintiff to be taken for felony, indicting at the assizes defendant's oath, and no bill found, *Ibid.* 74. *Bro. Va. Me.* 42; and plea thereto. Similar, for charging with a robbery, *Rob. Ent.* 68. 2. *Med. Int.* 100.
- For taking plaintiff before a magistrate on a charge of robbery, detaining him till he found bail for his appearance at the assizes, where a bill was preferred, and acquitted on the trial, *Hansf. Ent.* 30.
- For exhibiting false bills against plaintiff of *falsely enrolling pleas* in C. B. and procuring plaintiff to be often examined thereupon, *Ra. Ent.* 13.
- For a scandalous *libel* against plaintiff fixed on the door of the church, *Ra. Ent.* 13.
- By a king's messenger, for false and scandalous petition against him exhibited to justices at sessions, *Her.* 153.
- By an attorney, for exhibiting false articles against him in chancery, whereon, on the oath of defendant, a writ *de bona gestura* issued, and plaintiff was arrested thereon, *Her.* 157.
- Against abettors in appeal, *Ra. Ent.* 43.
- Indictment for words spoken by plaintiff when drunk, and plaintiff acquitted at the sessions, *Co. Ent.* 25.
- Indictment and imprisonment of plaintiff for *theft*, at the sessions of which he was acquitted at a special sessions, 1. *Br.* 207.
- For charging plaintiff with a *felony*, and procuring him to be indicted, to which plaintiff pleaded, and was acquitted on trial, 3. *Br.* 109.
- For charging plaintiff, *felony* and indictment, 27. H. 8. 11. in Middlesex, *Asb.* 26.
- For taking plaintiff before a justice of peace, charging him with *robbery*; recognizance for appearance at the assizes, indictment and *ignoramus* by grand jury, *Her.* 96.
- For *conspiring*, and causing plaintiff to be apprehended for a *robbery*; indictment at the assizes, and *ignoramus*, *Her.* 147.
- By an attorney indicted of *perjury*, and acquitted on trial, *Asb.* 24.
- On an indictment for *barretry*, *Her.* 88. 226.
- Against two defendants, who caused plaintiff to be indicted for *barretry* in London, whereof he was acquitted at the Newgate sessions, *Upp.* 31.
- For imprisoning and indicting plaintiff at special sessions before the president of the sessions in Wales for a *theft*, of which he was acquitted, *Rob. Ent.* 341. *Br. R.* 25. Similar, at assizes, and bill thrown out, *Hansf. Ent.* 24. 53. For stealing cattle, and indictment, at assizes of which plaintiff was acquitted, *Thomp. Ent.* 36.
- By a clergyman against three, who caused plaintiff to be apprehended for a *rape*, holding him to bail for his appearance at sessions, and after at assizes; bill preferred and thrown out, *Winch. Ent.* 96. Similar, at assizes only, *Pl. Gen.* 48.
- Similar, for an assault, with intent to commit a rape upon defendant's wife, *Clif.*

- Clif.* 28. For indicting for *barratry* at sessions, 1. *Brown.* 18. *Br. R.* 20. Against three, who caused plaintiff to be indicted for *barratry* in London, of which he was acquitted at the Old Bailey; *Rob. Ent.* 340. Similar, for procuring plaintiff to be indicted for a *forgery*, *Br. R.* 22. By a clergyman, indicted by plaintiff at sessions for *sedition*; bill preferred, and not found, 2. *Brown. Ent.* 21.
- Indictment for a *conspiracy* at assizes, *Ibid.* 24. For indicting on three indictments; first, for unlawfully and riotously stopping up a way; second, for unlawfully and forcibly entering into lands; third, for a trespass, and unlawfully and wrongfully cutting fences, &c. *Clif.* 24. For indicting plaintiff for shutting up a common way, *Ibid.* 31. For indicting plaintiff for an assault and affray, and bill thrown out, *Ibid.* 32.
- For charging plaintiff with a felony, taking him before a justice of peace, and a further examination before justices at sessions, *Her.* 71.
- For words of *theft*, by reason of which plaintiff was arrested on suspicion, by order of justices in London, and detained until bail found to appear at next sessions, where he was discharged on proclamation, *Ra. Ent.* 12.

PLEAS---MALICIOUS SUITS.

- Plea to declaration for exhibiting a scandalous petition to a committee in parliament, protesting, &c. Pleads, that defendant caused the writing to be written in form of a petition, and delivered to the committee by the commons in parliament appointed, according to the usual mode, and for the approbation of the members of the committee; with an averment, &c. Demurrer, and judgment for defendant, 1. *San.* 124.
- Plea by two defendants, *non. cul.* others plead, that they went to assist the constable to take plaintiff before a justice of peace, and that he bound him over to prosecute plaintiff the next sessions, and to give evidence. Replication, *de injuria sua*, and issue, *Vid.* 145.
- Plea, not guilty, to preferring a bill of indictment for felony, *Wi. Ent.* 96.
- Non. cul.* by two of three defendants and attorney for the third, confesses judgment for the third by *non est informatus*, *Wi. Ent.* 98.
- Plea of *autre fois acquit* at the grand sessions in Wales, to an indictment of murder at the assizes in the county of Hereford, and pleads over to the felony and murder not guilty, *Vid.* 207.
- Plea to declaration for charging with a rape, against three by one not guilty, by the other justification. Demurrer, *Pl. Gen.* 50.
- Plea, that defendant lost the goods, and suspecting plaintiff to have stolen them, gave notice to the constable and others, who, upon searching, found goods in plaintiff's possession, on which constable took her before a magistrate, who, upon examination, committed plaintiff to goal, and took defendant's recognizance to prosecute, who caused the bill to be preferred, and that other defendants come to give evidence that the goods belonged to defendant. Replication, *de injuria*, &c. and issue, *Wi. Ent.* 107. *Wi. Rep.* 73. 3. *Br.* 110.
- Plea, that he indicted plaintiff by order of the magistrate, 2. *Bro.* 14.

II. TORTS TO PERSONAL PROPERTY.

(For NEGLIGENCE, NONFEASANCE, and MISFEASANCE, *vide*.)

1. By Excessive Distress (4).
2. Immoderate Use of Horses, Cattle, and Goods lent and let to Hire (5).
3. Keeping Dogs, and other Noxious Animals, accustomed to bite Mankind, &c. (6).
4. Rescue, and *pound breach*, and not releasing Goods when replevied (7).
5. TROVER (8).

Other Injuries to Personal Property not classed, and
Consequences of Public Nuisances. *See post*.

1. By Excessive Distress (4).

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439. Declaration in B. R. against defendant, for making an unreasonable distress on the plaintiff's goods.
441. Declaration in B. R. against defendant, for selling and appraising standing corn after having distrained it for rent in arrear, contrary to 11. Geo. 2. c. 9. (*See Actions on Statutes.*) 2d Count, for excessive distress.
443. Declaration in B. R. for distraining beasts of the plough for rent, although there were other property on the premises liable to distress, whereby plaintiff was prevented from tilling his land. 2d Count, for an excessive distress. Plea, licence from plaintiff, and issue.
429. By tenant against landlord, for *distraining* when no rent was due, to recover double the value of the goods distrained on the statute William and Mary, c. 5. s. 5. (*See Actions on Statutes.*)
430. Declaration in B. R. by tenant against landlord, for distraining beasts of the plough and sheep, although there were sufficient goods and chattels on the premises.

2. Immoderate Use of Horses, &c. (5).

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435. Declaration in B. R. for *riding* a hired mare farther than agreed for, and so *immoderately* as to strain her fore legs.

Declaration

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Mod. Ent. 127

Declaration in tort, for excessive working the plaintiff's mare,
For taking away and riding plaintiff's gelding in such man-
ner that the beast was much damnified, - -

Ibid. 140

For horse let to hire, so immoderately used, that he died, *Reg. 6. Ass. 49.*

For a mare delivered to defendant to till the lands for two days, so excessively
worked that she died, *Her. 100. 189.*

For a gelding delivered to defendant to ride, so heavily burdened, and going so
fast, that he died, *Her. 101.*

For immoderate riding a horse lent, and trover, and conversion of a gelding, &c.
Plea, not guilty within six years. Replication, that he sued out an original in
trespass, *quare clausum fregit*, &c. and that defendant is guilty within six years
before, &c. Rejoinder, that the original was prosecuted with intent to declare
in debt for seven pounds; and traverse that it was prosecuted with intent in the
replication. Demurrer, and judgment for defendant, for that plaintiff concludes
to the country, 1. *Lut. 98.*

3. Keeping Dogs and other Noxious Animals accustomed to bite Mankind (6).

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437. Declaration in B. R. against defendant, for keeping a
dog *he knew* to be accustomed to bite mankind, and
which bit plaintiff, and very much injured him; *per*
quod, &c.

581. Declaration in B. R. against defendant, who kept two
rams which he knew to be vicious, for suffering them
to wander about, and which said rams broke into plain-
tiff's close, and fought with and killed plaintiff's ram.

Declaration for keeping a boar, which run against plaintiff's
mare and wounded her, - -

Mor. Pr. 442

For keeping a dog accustomed to bite people, which bit
plaintiff's wife, - -

Ibid. 443

Declaration for keeping a dog that worried plaintiff's sheep,
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2. R. P. C. B. 173

For keeping a dog accustomed to bite sheep, which dog bit
plaintiff's sheep, whereby some of them died, -

Pl. Ass. 105

Declaration for keeping a dog accustomed to bite mankind,
which bit plaintiff's apprentice, whereby he lost his service
for a long time, and laid out money in the cure, -

Ibid. 117

Plaintiff bitten by defendant's dog, accustomed to bite. Plea, *non scienter*, 1. *Bro.*
29. 2. *Inst. Cl. 197.*

For sheep bitten by defendant's dog accustomed to bite; that great part died, and
residue were much hurt, *Ro. Ent. 77. Br. R. 43.*

For a horse bitten, so that he died, *Ro. Ent. 20. Her. 249.* A boar bitten, *Br. R. 43.*

For a cow accustomed to strike, by which plaintiff was dangerously wounded, *Ibid.*
40.

For striking pigs by a bear, accustomed to strike animals, *Br. R. 73.*

For a wound given to plaintiff by a savage bull of defendants. Count bad, for not stating that the defendant *sciens*, &c. 1. *Lut.* 90.

Plea (to declaration by a person bit by a dog) *non scienter*, that the dog was *accustomed to bite*, 1. *Bro.* 27.

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432. Declaration in B. R. for *rescuing* one A. B. who was indebted to the plaintiff, and was in the custody of the bailiff.

Declaration for rescue of *one who was arrested* at plaintiff's suit, For rescue of a cow *distrained for rents*, *Her.* 647 to 649.

1. *Mod. Ent.* 133
Ibid. 210

Declaration, stating that plaintiff would have distrained five hogs, damage feasant, and would have impounded one only, but defendant, with four others, *rescued* said four hogs, and broke the pound, and from thence took *the hog distrained*. Plea thereto by one defendant, not guilty by second, not guilty as to breaking the pound, and issue, and as to taking all the five hogs, he pleads that the said five acres in which, &c. are his freehold, wherefore he took them from the plaintiff, which is the same, &c. Replication, that plaintiff was seised in fee as of *locus in quo*, called, &c.; and traverses that they were taken in home marsh. Rejoinder to the *new assigned place*, in replication, and that defendant *tendered sufficient amends*. General demurrer and joinder,

Ibid. 211, 212

Declaration in C. B. for rescuing a horse distrained, damage feasant, which plaintiff's servant was taking to pound,

1. *Clerk's Eng. Tut.* 134

Declaration in C. B. by three *executrixes* and their *husbands* against a *gaoler* of a hundred court for a rescue of a *prisoner* in execution, in which all the proceedings are set out in the original action on a *promissory note* made to the plaintiffs as executrixes. 2d Count, omitting all the proceedings previous to the judgment, and stating that generally,

Pl. Ass. 84. 90

Declaration for rescue and pound breach on a distress by devisee for life of a freehold rent,

Lill. Ent. 377

Declaration in an action on the statute 2. W. and Ma. for rescuing a *distress for rent* under a demise,

3. *Ld. Raym. N. Ed.* 177

For rescuing a *distress for rent*,

Mod. Ent. 200

Against a *rescuer*, on a *non omittas ca. fa.* *Her.* 68.

For rescue of a person taken on a *latitat* at plaintiff's suit, 1. *Br.* 255. 3. *Br.* 90.

Plea, not guilty, *Br. R.* 48. *Ro. Ent.* 13.

Against defendant, who rescued goods *distrained* for rent arrear, *Rob. Ent.* 12.

Similar, a *bullock* taken as a *relief*, *Br. R.* 42.

For the rescue of a person taken on a *latitat* at the suit of plaintiff, *Br. R.* 48. 49.

1. *Br.* 255. 3. *Br.* 90. *M. d. Intr.* 23. Similar, taken on a *capias* in debt, *Hansf. Ent.* 32. *Ass.* 59. 3. *Br.* 42.

On a *capias ullegatum* *Her.* 241. *Rob. Ent.* 21. On a bill of Middlesex upon a recognizance entered into before chief justice of C. B. *Hansf. Ent.* 47. On a writ of rebellion in chancery for the execution of a decree, *Hansf. Ent.* 8.

Against defendant, who, together with others, rescued sheep taken, *damage feasant*, *Br. R.* 9.

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cepted by defendant.
373. Trover for a *bond*—for a *draft* on a banker—and for *fish*.
373. Declaration in B. R. in trover at the suit of *assignee of a*
bankrupt. 1st Count, for trover and conversion in
time of *bankrupt*. 2d, in time of *assignee*.
374. Declaration in C. B. in trover, for a *lease*, at the suit of
the assignee of lessee.
375. Declaration in B. R. in trover, for *American certificates*,
against an *attorney*.
376. Declaration in B. R. in trover against *assignees of a bank-*
rupt, to recover *monies, notes, and bills*, which were
remitted to bankrupt to take up bankrupt's accept-
ances for plaintiff, which he did not do, but there-
with satisfied his own creditors, then committed an
act of bankruptcy, and the *identical* monies were
seized under the commission.
377. Declaration in B. R. in trover, for goods, by *assignee of*
a bankrupt.
378. Declaration in trover in B. R. at the suit of a *husband*
and wife administratrix, during the minority of an
infant; with an averment, that infant is yet a minor
under twenty-one years.
392. Count in trover for a gelding.
393. Count in trover for a gun.
Declaration in trover by assignees of a *bankrupt*, for a ship
and her furniture,
Plaintiff claiming a right to cut and take rushes on a com-
mon, having cut five or six loads, which defendant takes
and carries away, and jointly convert to their own use.
Plea, not guilty,
Declaration in trover in C. B.
Trover by assignees of *bankrupt's* effects on their own posses-
sion,
Trover for money,
Trover against *husband and wife*, for trover by wife *whilst sole*,
Declaration in trover by *husband and wife, administratrix de*
bonis non of a former administrator, for a mortgage deed
and other goods conversion laid in the plaintiff's own time.
Three Counts,
Declaration in B. R. in trover for broad cloth. Plea, submis-
sion to an award by plaintiff and defendant pending the
suit, and a final award thereon, and performed on defen-
dant's part. Replication, taking issue on the award. Sub-
mission. Performance,
Declaration in trover for building materials,
Trover for silk waistcoat. Plea, confesses conversion, but
pleads that defendants did discharge and acquit him in con-
sideration of a promise made by him to pay plaintiff twenty
pounds,

Mor. Pr. 453

2. Will. Rep. 338
1. R. P. C. B. 134

2. R. P. C. B. 160
Ibid. 161
Ibid. 162

Lill. Ent. 70

Ibid. 507, 508
Ibid. 509

3. Ld. Raym. N. Ed. 116
Trov

| | |
|---|------------------|
| Trover in B. R. by a survivor of three joint merchants, for a ship and other goods. Plea, that they were joint merchants, and so there ought to be no survivorship, that one of the merchants made a will, and an <i>executor</i> , who proved it, and is still living, and that the other deceased merchant made a will, and an executor, who proved, and is still living, - | 1. Ld. Raym. 662 |
| Trover by <i>executor</i> , for cattle lost in the lifetime of testator, - | Mod. Ent. 121 |
| Trover by an <i>administrator</i> , - | <i>Ibid.</i> 173 |
| Trover for an anchor, sails, and three cables, - | 3. Ld. Raym. 138 |
| Tort against a common carrier by land; with a count in trover for a box containing one hundred guineas, - | 1. Ld. Raym. 58 |
| Trover for tin, foreign coined money of India currency, - | Lill. Ent. 496 |
| Trover for cattle, goods, and chattels, - | 3. Ld. Raym. 75 |

* Declarations in Trover. (See Addenda to Index.)

Trover for a waistcoat, that he was possessed of a waistcoat, and that he lost the goods and chattels aforesaid. Plea, confesses the conversion, but pleads that plaintiff had exonerated and acquitted him in consideration of a promise made to pay plaintiff twenty shillings. Demurrer, for that it was not averred the twenty shillings was paid before action brought, and held good, 2. *Lut.* 1537.

Plea to trover for ship and goods, that defendant, as captain of a man of war, took the ship, &c. as prize trading to parts beyond the seas, contrary to royal prohibition. Demurrer, *Br. R.* 69.

Plea to trover by *executor*, for a gold chain; to part, *non. cul.* to residue, that defendant, as wife of *testator*, had them in testator's life-time for ornament, &c.; and avers, *that plaintiff had sufficient to pay debts beyond the chains.* Replication, maintaining the declaration, and traverse that the goods of testator beyond the chains were sufficient to pay, &c. *Ro. Ent.* 81. *Her.* 244.

Plea to trover, for cattle, a custom of the city of London, that *live* cattle bought or sold by a *stranger* out of the Smithfield market before nine of the morning, were forfeited to the mayor, &c. That plaintiff sold two bullocks, which defendants seized as forfeited; and traverses the conversion at *W. Tho.* 380.

Plea to trover for goods, that plaintiff demised to defendant a cottage, with the goods, and it was agreed between the parties that defendant might use the goods for a term, and at the end deliver or pay plaintiff a reasonable price to be valued by *W.* who appraised them at five pounds, which defendant tendered. Demurrer, *Wi. Ent.* 51.

Plea to trover for a gelding, that plaintiff gave authority to *T.* to sell the gelding, who agreed with defendant that he should try him, and if he was not found, or did not please defendant, then to be re-delivered to *T.*; that defendant found the gelding unsound, and re-delivered him to *T.*; with averment, *that the gelding was in as good condition, &c.* Replication, maintaining declaration, and traverses agreement, 1. *Bro.* 356. 3. *Inst. Cl.* 298.

Plea to trover for ninety sheep lost. *Judgment in trespass-recovered* in the same court for the same cause, and damages assessed at twopence. Replication, that twopence were not assessed for the value or conversion of the sheep, but for taking and chasing them; and traverses that the taking and chasing in that action could be a conversion. Special demurrer, *Wi. Ent.* 99. 1. *Gra. Lacon's Case*, *Wi. Ent.* 62.

¶ Omitted by mistake.

Plea

- Plea to trover for a horse ; justifies the conversion by the custom of England as an *innkeeper* for his *feed*, 3. *Inst. Cl.* 300. *Ro. Ent.* 26. *Her.* 162.
- Plea to trover and conversion of plaintiff's goods by waterman, that goods were sunk and lost by tempests, *Ro. Ent.* 300. *Br. R.* 101.
- Plea to trover for two oxen, that they come into defendant's manor as an *esbray*, and one died of a disease, and he proclaimed the other on two market-days. Replication, that one died by being overworked, and converted the other ; and traverses the proclamation made, *Co. Ent.* 40.
- Plea to trover for silver bowl that was pledged to him by plaintiff for forty shillings, with interest, *Her.* 177.
- Plea to trover by *administrator*, that administration was first committed to defendant, who took the goods and disposed of them for the payment of debts and funeral of deceased. Replication, that plaintiff caused defendant to be cited in the court christian, to make void letters of administration which were revoked and committed to plaintiff, and defendant sold the goods *pendente lite* ; and traverses that he disposed of the money about the payment of debts and funeral expences. Demurrer, *Co. Ent.* 38.
- Plea, that he distrained goods in a house for rent unpaid, on a demise thereof to plaintiff, who requested goods distrained to be delivered to him, which defendant refused unless he paid the rent ; and traverse that he is otherwise not guilty, 3. *Br.* 483.
- Plea to trover for wood, that the king being seised of woods, &c. granted to defendant in tail, who cut trees, and *gives colour*. Replication, that plaintiff, seised of other woods were trees grew ; and traverse that they grow in defendant's wood, *Co. Ent.* 41.
- Plea to trover, for goods converted and sold, that he did not sell the goods, &c. *Dy.* 121. 1. *And.* 20.
- Plea to trover, for a hawk that he found in lieu in his dove-house, and delivered him to sheriff, not knowing that he belonged to plaintiff, *Her.* 104.
- Plea, that he bought the goods in an open shop in London. Replication, maintaining declaration, and that defendant delivered the goods to one R. who *per fraudem* between him, and defendant sold goods to defendant, with intent to defraud plaintiff. Rejoinder, maintaining bar ; and traverses fraud, and issue, *Wi. Ent.* 109. 3. *Inst. Cl.* 289.
- Plea to trover for a boat, that the admiral of England, by letters-patent, had all *wrecks* on the shores of the sea or rivers within the flux and reflux of the sea, and J. an officer of the court, took the boat floating on the river Thames, and sold her to plaintiff. Replication, that within the year and day after seizure he claimed the boat ; issue on the claim, *Ro. Ent.* 445.
- Plea, that defendant affirmed his plaint in debt in the court at Westminster against plaintiff, and summons and attachment thereon awarded to the bailiff of the court, who attached the goods, and plaintiff at the next court making default, the goods were forfeited to the lord ; *per quod*, the bailiff took them and delivered them to defendant for safe custody until, &c. ; and traverses that plaintiff was possessed of the goods for a day and a year in the declaration specified, *Ro. Ent.* 447.
- Plea to declaration by *executor* of executor, that defendant, seised of messuages, demised to testator for a year, rendering rent, and for rent arrear, took the goods as a distress. Replication, maintaining declaration, and issue, *Ro. Ent.* 450.
- Plea, that plaintiff acknowledged a statute staple to defendant for two hundred pounds, who thereupon sued out his writ of *extendi facias*, that he delivered to the sheriff, who by virtue thereof seized plaintiff's goods, and delivered them to defendant in part satisfaction of the debt, *Ro. Ent.* 451.
- Plea to trover by a surviving merchant, that they were joint merchants, and no survivorship ; and that one of the deceased made a will, and left an executor, who proved it and is living, and so of the other, to which the plaintiff demurred, *Le. Ent.* 20.

Plea, that plaintiff sold the goods to him at London, *Bro. Vad.* 120.

Plea, that plaintiff licensed a stranger to pawn the goods for money lent, 2. *M. Int.* 149 *Tre. Tro.* 158.

Plea, that plaintiff delivered the horse to B. to sell for him, and that he sold him to defendant upon a price if he pleased him, and gave him leave to try him by riding three miles, *Tre. Tro.* 177.

Plea to trover for an anvil that defendant, as bailiff of the court baron of E. and by virtue of a *lezari* did levy and take the plaintiff's anvil, had it appraised, and sold it for twenty-six shillings, and gave the money to B. *who had recovered the same against the plaintiff in the said court in an action on the case, Tre. Tro.* 181.

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428. Declaration in B. R. against defendant for throwing rubbish in the street, whereby plaintiff's wife and son were turned over in a cart, and wounded.

III. TORTS OF A MIXED NATURE,

I. DECEIT, and on a Warranty (10.)

See NEGLIGENCE, NONFEASANCE, and MISFEASANCE, *post.*

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365. Declaration in E. R. for *deceit*, in selling spirituous liquors by *short measure*.

366. For *deceit, and on a warranty* in exchange of horses, and money paid by plaintiff.

366. Declaration in B. R. in *not delivering the proper measure* of coals.

367. Declaration in B. R. for *deceit in the exchange* of one horse for another and money, defendant knowing his to be *unsound*, and plaintiff's horse and money being a valuable consideration for a sound horse.

368. Declaration in B. R. for *deceit* in selling plaintiff *unsound sheep*, part of which died, and others sick.

369. Declaration in B. R. for *deceit* in selling wool *artificially packed*.

370. Declaration in B. R. for *deceit*, at the suit of merchants against their *factor*, for *not delivering* them gum which he had purchased for them, but *withholding same under false pretences, selling same, and converting of the extra price*.

Declaration on exchange of two of plaintiff's oxen for defendant's mare and one guinea,

For selling bad wool for fleece wool, with bad wool in the midst of it mixed,

On a warranty of a mare to be sound, when she was lame.

Seven Counts. Plea, not guilty,

Mor. Pr. 255

Ibid. 167

2. *Will. Rep.* 40
For

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2. R. P. C. B. 165

For selling an unsound horse, warranting him to be sound,
Declaration for falsely affirming that a third person was fit to
be trusted, whereby plaintiff was induced to sell him goods
on credit, when in fact the person was unable to pay for
them, - - - - - 3. T. R. 51
For making bricks in a manner so unworkmanlike, that they
were of no use to plaintiff, - - - - - Mo. Ent. 140
For selling a gelding to plaintiff, knowing it to be the property
of another, - - - - - Ibid. 141
For playing with false dice, - - - - - Ibid. 164
Count in a declaration in nature of a writ of deceit on a
false affirmation, - - - - - 4. T. R. 51
For deceit in falsely asserting premises to be let at a greater
yearly rent than they really were. Plea, not guilty, - 2. Ld. Raym. 1118

By brewer against maltster, for selling bad malt, *Asb.* 36.
For selling wax, and delivering part mixed with rosin, &c. *Dy.* 75.
Against a goldsmith, who sold a sapphire for a diamond, *Her.* 102.
Against a butcher, who sold meat by *false weights*.
For making a *writing* to plaintiff by false name of baptism, *Her.* 222.
Playing with plaintiff with *false dice*, *Co. Ent.* 8. *F. N. Br.* 95. *Reg.* 290. *Upp.*
333.
Against the late servant of the vicar deceased, for selling to plaintiff wool for tithes,
whereof the plaintiff was afterwards charged to the bishop having the vacancy,
Ra. Ent. 592.
For suing out a writ in the name of the plaintiff, who was ignorant of it, *Reg.* 112.
Similar writ in *quare impedit*, whereon there was a *non. prof.* by which his clerk was
amoved, *Reg.* 112.
For acknowledging a statute merchant for defendant in plaintiff's name, whereon he
was afterwards taken, *Reg.* 112. 114.
By prior, for counterfeiting the common seal of presentation to the vicarage, *Reg.*
112. Of resignation of vicarage, *Reg.* 114. By another, *Reg.* 116.

AGAINST ATTORNIES. (*See Post.*)

Plaintiff obtained judgment against defendant in assize, for that defendant had no-
thing in the county, caused the record thereof to be sent into B. R. to have exe-
cution; and defendant, under colour of prosecuting an attain, procured the
record to be sent into chancery, by which the execution is delayed, *Reg.* 113.
Plaintiff sued out a writ of lands against defendant, who pleaded a fine. Replication,
misnomer, and defendant on the *dies datus* procured a person unknown to come in
the name of plaintiff, and confess defendant's plea, *Reg.* 113.
Plaintiff brought a writ of a plea of lands against defendant, who, on the *dies datus*,
prayed delay under a false colour, when defendant was then in England, *Reg.* 113.
116. 20. H. 6. 10. *Ra. Ent.* 492. *Vet. Int.* 81.
Against master and servant, for *procuring* the servant to be recorded for plaintiff's
attorney in a plea of land prosecuted by master against him, whereon an *essoin*
was cast, *Reg.* 67.
Defendant, for procuring a person unknown to come into court and call himself
by plaintiff's name, and make defendant an attorney in trespass, and defendant
was absent at the time of taking the jury; *per quod*, forty pounds were recovered
for damages against plaintiff, *Reg.* 113.

For

For procuring an attorney to be made for plaintiff without his notice in a plea of land, by whose default plaintiff lost his land, *Reg.* 114.

WARRANTY, &c.

For selling cows warranted to be perfect, and with calf, where one cow was barren, and the other cow had only three teats, 1. *Bro.* 15.

For selling woollen yarn warranted good to make cloth, 1. *Bro.* 15. And for skins warranted, *Clif.* 934. Sheep warranted sound, 1. *Bro.* 30. Oxen, *Cl. Man.* 111.

For selling the cow of another warranted to be his own, *Tbo.* 40. Unsound cow warranted sound, *Tbo.* 40. *Cl. Man.* 148. Of *virvicibus*, *Tbo.* 40. Cheese and butter warranted good, *Clif.* 935. Roots of *lupulorum* warranted, *Clif.* 935. Of a hired horse, that he would be fit for his journey, when he was unfit, 1. *Bro.* 38. Not guilty pleaded, *Ro. Ent.* 58. *Her.* 169.

For selling the horse of another warranted to be his own horse, was afterwards taken by the owner, *Clif.* 933. *Ass.* 35.

For warranting an unsound horse to be sound, *Vid.* 10. *Pl. Gen.* 18. *Ra. Ent.* 9. *Vet. Int.* 19. *Reg.* 108. *Her.* 223. 2. *Cro.* 630. An unsound gelding, *Han.* 84.

For warranting a gelding diseased with the scab, *Tbo.* 30. With the glanders, 2. *Mo. Int.* 89. Selling a horse for a chaldron of coals, *Clif.* 936.

For selling unwholesome wine warranted fit to drink, and for deceitfully detaining other wine beyond the time fixed on, *Clif.* 938.

For selling woollen cloth warranted to contain so much in measure, *Tbo.* 34.

For paper warranted good, entire, and not torn, *Br. R.* 18.

For rotten timber warranted good and fit for ship-building, *Br. R.* 80.

For that fraudulently sold a horse foundered, warranting him sound, *Clif.* 932. Three Counts.

For warranting a blind horse sound in his eyes and limbs, *Reg.* 108.

For selling unsound oxen warranting them sound, *Upp.* 231. Sheep, *Her.* 102.

224. A hawk, *Upp.* 239. Of malt stinking, warranted good, *Ra. Ent.* 9. *Reg.* 111. *Upp.* 245. Stinking fish, *Reg.* 96. *Her.* 102. 229.

For selling a cask of wine warranted good, when it was sour, corrupt, and unwholesome, *Her.* 52. Butt of wine warranted fit and wholesome, 9. *H.* 6. 53.

Woollen cloth not well filled, 9. *H.* 6. 53.

Sacks woollen, warranted to contain so much, *Dig.* 179. 13. *H.* 4. 1.

Plea, did not warrant, *Ra. Ent.* 9. *Vet. Int.* 9. With protestation, *Upp.* 231.

That he warranted the horse free from every known fault; and traverses warranting generally.

For the cow of another sold to plaintiff, 1. *Bro.* 25. Horse of another, *Her.* 102. 224. *Ass.* 35. For the horse of another which defendant exchanged for plaintiff's horse, and defendant pretended the horse was his own, *Clif.* 972. *Her.* 77.

For wool bought by plaintiff of defendant, and sold to another, *Pl. Gen.* 14. 19. *Ro. Ent.* 29. Where defendant made a bond to plaintiff by a false name of baptism, 1. *Bro.* 27.

For procuring persons unknown to plaintiff to be bound for one W. in false names, by which W. was permitted to escape, and plaintiff lost his debt, 1. *Bro.* 52. For maliciously procuring plaintiff to be outlawed in B. R. and taken thereupon, 1. *Bro.* 87.

Against a butcher, who sold tallow by false weight, *Han.* 32.

Against defendant, for selling grain by false measure, *Tbo.* 25.

For selling stinking fish, *Cl. Ass.* 215.

Against a foreigner, who procured the escape of plaintiff's prisoner taken in rebellion in Ireland against plaintiff's will, *Ro. Ent.* 89. For a false presentment by jurors of the manor court, by means whereof another was fraudulently admitted, and plaintiff lost the benefit of his purchase, *Br. R.* 17. For pretending that he (defendant) was the person to whom a legacy was bequeathed, and receiving it, whereas he was not the legatee, *Cl. Ass.* 219.

India Company against a company of merchants trading in London, by an act for levying a sum not exceeding two millions, the said company of merchants falsely and maliciously claimed divers goods imported which were forfeited, by which the company trading to the Indies lost three parts of their forfeitures, *Clif.*

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For detaining apprentice from service of his master, *Tbo.* 33. *Vid.* 86.

For retaining a servant to serve plaintiff, who falsified a bill, and delivered a false bill, went out at night, and wasted plaintiff's money and goods in taverns, *Vid.* 82.

For

For retaining a servant for plaintiff as a shepherd for the year, who left his service within the year; *per quod*, plaintiff lost ten sheep, *Br. R.* 35.

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420. Declaration in B. R. by *printer* of a certain edition of the Bible, to which there were many subscribers, and defendant (who was employed by plaintiff to distribute the work) in order to hinder the sale of the work, caused a number of hand-bills to be distributed among the subscribers, informing them, that the work would never be completed, whereby a number of them withdrew their subscriptions.

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Declaration by plaintiff, owner of a copyright of the book called the *Pilgrim's Progress*, for *printing and selling same* without plaintiff's licence, *Mod. Ent.* 129. -

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456. Declaration against the sheriffs of London for the voluntary escape of a person they had arrested. 2d Count, neglecting to arrest when they had him in view, and returning *non est inventus*.
458. Declaration in B. R. against the sheriff of Middlesex for returning to a *capias ad respondendum* that plaintiff rescued the person arrested, upon which an attachment issued against plaintiff, and he was imprisoned and put to great expence.
460. Declaration in C. B. against sheriffs for making a *false return*, whereby plaintiff lost the opportunity of recovering his debt and damages on a judgment he had recovered.
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- Against the *warden* of the Fleet for the escape of a prisoner charged in execution,
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Mor. Pr. 362.

Ibid. 373.

Ibid. 377.

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|---|--------------------------------|
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| Declaration against <i>sheriff</i> for an escape on an <i>excommunicato capiendo</i> , | <i>Ibid.</i> 87. 219. |
| Against the then late <i>sheriff</i> of L. for an escape upon <i>mesne process</i> , and <i>falsely returning</i> that he had his body, | Mod Ent. 136. |
| Declaration against the <i>sheriff</i> for an escape on <i>mesne process</i> , | <i>Ibid.</i> 174. 176. |
| Declaration in C. B. for an escape of one taken upon a <i>capias utlegatum</i> before judgment, | <i>Ibid.</i> 175. |
| Against the <i>warden</i> of the Fleet for escape of a person who had surrendered himself in discharge of his bail, and had been turned over by the late <i>warden</i> to the present <i>warden</i> , the now defendant, | Plead. Ass. 114. |
| Declaration at the suit of an <i>infant</i> by his <i>prochein ami</i> against a <i>sheriff</i> for a <i>false return</i> , whereby plaintiff was taken on an <i>attachment</i> for a <i>rescous</i> , | 1. R. Pr. C. B. 474. |
| Declaration against high bailiff of Westminster for returning <i>nulla bona</i> to a <i>feri facias</i> , though he had levied the debt, | Lill. Ent. 40. |
| Declaration in B. R. against a <i>sheriff</i> for a <i>false return</i> of a <i>feri facias</i> after a writ of error, | Plead. Ass. 207. |
| Declaration in C. B. against a <i>sheriff</i> for <i>false return</i> of a <i>feri facias</i> , | <i>Ibid.</i> 209. |
| Declaration in B. R. against the <i>chancellor of the diocese of Peterborough</i> for a <i>false return</i> to a <i>mandamus</i> to admit and swear plaintiff to the office of churchwarden, | Plead. Ass. 297. |
| Declaration for <i>false return</i> to <i>mandamus</i> . Plea, that plaintiff never was mayor, and therefore defendant ought not to deliver to him the ensigns of magistracy. Demurrer and joinder, | 3. L. Raym.
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| Declaration against the <i>sheriff</i> of Middlesex, who on a pretended plaint in replevin by a third person, delivered the goods distrained to him without sufficient <i>sureties</i> to prosecute; the plaint was removed into B. R. and return adjudged to the plaintiff, but the goods were eloigned, | Lill. Ent. 37. |
| Declaration on the statute 23. Hen. 6. c. 10. against a <i>bailiff of a hundred</i> for refusing to take bail on arrest under a <i>capias ad respondendum</i> out of C. B. | <i>Ibid.</i> 71. |
| Against <i>sheriff</i> of Middlesex for not taking sufficient pledges in replevin, | Mod. Ent. 215. |
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| Plea by <i>warden</i> of the Fleet to an action for an escape, a licence from the plaintiff to let the prisoner go at large. Replication, | Mor. Pr. 389. 390.
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Plea to action for *escape*. 1st, not guilty; 2d, that prisoner broke the prison by force, and escaped unknown to defendant; that he returned again, and that defendant hath the prisoner now in his custody at the plaintiff's suit. 3d, fresh pursuit; that defendant took the prisoner, and now hath him in his custody,

Mor. Pr. 391.

Plea by *chief bailiff* of a *liberty* to an action for escape, that rioters demolished the gaol, bad,

4. T. R. 789.

Case for escape of one taken on a *capias excommunicatum* for non-payment of tithes, 1. *Lut.* 122.

On *mesne process* for an escape. The defendants, sheriffs of L. plead a *rescue*. Replication states circumstances to prove that defendants could have carried prisoner to gaol, and judgment for defendant, 1. *Lut.* 129.

Against bailiff of a *liberty* for not returning writ after arrest made, 1. *Bro. Ent.* 42. *Rob. Ent.* 87. Against bailiff of liberty who executed a *ferri facias* and returned *nulla bona*, *Vid. Ent.* 6.

Against bailiff of a *liberty* for an *escape* on a *capias ad satisfaciendum*, reciting the whole of the judgment, *Rob. Ent.* 311.

Against the *mayor and commonalty* of the city of C. for a false return on a *mandamus* to restore an alderman to his rank where the writ and return are set out, *Vid. Ent.* 1.

Similar, against *master and fellows of college* for the expulsion of one of the fellows, and for a scandalous and false return to the *mandamus*, *Vid.* 3.

Against the *steward* of a hundred, who caused plaintiff's beasts to be taken out of his custody to be replevied *without pledges for the prosecution found* and return to be made, *Br. R.* 25. 1. *Br.* 208.

Against the officer of an inferior court who withdrew when the inquisition ought to be taken after attachment of goods for the debt, and that the plea was discontinued, and goods delivered without the debt being satisfied, *Br. R.* 73. *Reg.* 199.

By the *marshal* of the Marshalsea against the *warden of the Fleet* for the escape of a person arrested by the bailiff of the liberty of Westminster on a *capias ad satisfaciendum*, and committed to the Fleet in execution by one of the justices of the bench on a *habeas corpus*, 2. *Br. Ent.* 13.

Against the *keeper of the prison of Ludgate* for the escape of a bankrupt committed there by commissioners, *Rob. Ent.* 82. *Her.* 184.

Against the *bailiff of a liberty* for the escape of a person arrested on a *capias* in debt at the suit of plaintiff, *Re. Dec.* 89. Similar against an attorney being bailiff of a franchise, *Cl. Aff.* 289. And on a bill of Middlesex, *Vid. Ent.* 40. *Rob. Ent.* 299.

For the escape on a *capias utlegatum* before judgment, *Ra. Ent.* 8. 1. *Br.* 227. 3. *Br.* 39. 94. *Her.* 74. *Asb.* 32. 1. *Br. Ent.* 18. *Br. R.* 33. Similar after declaration and before judgment, 2. *Mo. Int.* 96. Similar after judgment, *Ibid.* 98. 2. *Infr.* *Cl.* 189. Similar where sheriff returned prisoner was sick in prison, *Rob. Ent.* 9. *Her.* 167. For an escape on a *capias ad satisfaciendum utlegatum* after judgment. *Rob. Ent.* 100. and writ not returned, 3. *Br.* 89. Similar on *mesne process*, 3. *Lev. Rep.* 42. 45. Against sheriff of Middlesex for an escape of one arrested on a bill of Middlesex, *Tbo. Ent.* 31. *Han.* 48.

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- For not returning *capias utlegatum* before judgment, *Cl. Aff.* 262. Against the sheriff for not taking sufficient security on an arrest by bill of Middlesex, 2. *Sand. Rep.* 51. *Her.* 129. Similar, and *cepi corpus* returned by the sheriff, *Ibid.* 150.
- Against the sheriff of London for an escape on process out of the mayor's court, 1. *Br. Ent.* 49. Similar on a plaint levied on an account, *Rob. Ent.* 298. 308. Similar on an arrest and imprisonment in the time of a former sheriff, who on going out of office delivered the prisoner to the custody of defendant, *Vid. Ent.* 15.
- For an escape on an attachment of privilege, *Cl. Aff.* 261.
- Against the sheriff, who neglected to execute *testatum capias ad satisfaciendum* upon a person who was present, and for returning *non est inventus*, *Tbo. Ent.* 38. Similar on a statute staple, *Rob. Ent.* 9. Similar of special *capias utlegatum*, and return of *nulla bona*, 2. *Vent. Rep.* 84. Against sheriff for a false return on a *scire facias*, that defendant's executor wasted the goods, *Rob. Ent.* 34. 59; *Br. R.* 38. 1. *Br.* 235. 237. *Her.* 172. *Ra. Ent.* 11. Similar by administrator, *Rob. Ent.* 61. *Br. R.* 37. 2. *Inst. Cl.* 186. Against a sheriff, who on a *fieri facias* returned that he took goods to the value of the debt, which remained unsold, and did not return the *venditioni exponas* delivered to him, but converted the money to his own use, *Br. R.* 36. 1. *Br.* 231. Similar against bailiff of a liberty who executed the *fieri facias* and returned *nulla bona*, *Vid. Ent.* 6. and on a *capias ad satisfaciendum* after two *scire facias*'s returned, *Rob. Ent.* 309.
- Against the warden of the Fleet for an escape, *Re. Dec.* 93.
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- Against the under marshal of the Marshalsea court, who permitted a person under arrest at the suit of plaintiff to go at large, *Rob. Ent.* 300. *Reg.* 111. Against the bailiff of a liberty for an escape, and return of *non est inventus* after the arrest, *Br. R.* 52. Against a turnkey for the escape of one arrested on a plaint levied on an account according to the custom of the city, *Br. M. N.* 21. Against sheriff's officer, who refused to take good bail for the plaintiff on an arrest. Against the bailiff, who returned to sheriff that plaintiff made a rescue where no rescue was made, *Cl. Man.* 182.
- Against the clerk of the errors for extortion of fees on outlawry after judgment, *Rob. Ent.* 90. 1. *Br.* 266. Against a filazer of C. B. for suing out a writ of trespass upon a disseisin of lands held in ancient demesne, *Br. R.* 53.
- Against the deputy sealer, who deceitfully and knowingly put upon a parcel of woollen cloth belonging to plaintiff a seal called a kersey seal in the place of a seal called a half cloth, by means whereof the cloth was seized, as forfeited to the king, *Vid. Ent.* 52.
- Against sheriff, who executed the writ of seisin and *elegit* in waste after *superfedeas* on a writ of error allowed and delivered to him, *Rob. Ent.* 47. *Her.* 213.
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- For falsely returning on a writ directed to the archbishop on an issue in *quare impedit*, without notice to the archbishop in his name, that one W. was admitted on the presentation of the duke of, &c. *per quod* judgment was given against plaintiff, *Her.* 245.
- Against an escheator for not taking an inquisition by oath of jurors, but returned of his own motion into chancery; *per quod* plaintiff was removed from possession of the manor demised to him by the guardian of the heir, *Reg.* 115.
- Against chirographer of the bench, who indorsed a proclamation on fine so improperly, that plaintiff lost the lands in *formedon*, *Co. Ent.* 15.
- Against a bishop for not admitting plaintiff's clerk on judgment in *quare impedit*, *Her.* 176.
- Against a bailiff of a liberty, who on summons returned that plaintiff had nothing, and caused him to be taken and imprisoned on a *capias* till he paid the fine, *Ra. Ent.* 11.

Against *bailiff* of liberty in Middlesex for an *escape* of an *arrest* on a *capias* *faciendum* in trespass after *poine* in B. R. *Upp.* 49. On a bill of *Upp.* 236.

Against a bailiff of a hundred, who neglected to arrest one present by *alias capias ad satisfaciendum* in trespass, 3. *Br.* 40.

Against mayor and bailiff for *escape* of one arrested by plaint in case, *Her.*

Against *sheriff* of London for an *escape* on plaint, *Her.* 129.

Against *sheriffs* of the city for *contempt* in not proceeding in a plaint in the according to three writs of *proc. dendo* delivered to them, *Ra. Ent.* 83.

Against keeper of Ludgate for *escape* of a bankrupt committed by co. *Her.* 184.

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By the keeper of a gaol against one committed by auditors to account, *per quod* plaintiff paid the money, *F. N. Br.* 95. 130.

By the late *she iff* against a bailiff of a hundred, who by plaintiff's warrant money payable into the exchequer, and did not pay to plaintiff, *Her.*

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For an *escape* on statute merchant, *Reg.* 98. On *capias* to account, *Ass.* judgment in trespass, *Reg.* 98.

For the return of a member of parliament instead of plaintiff, who was duly not allowed that it was determined for plaintiff, or found in the special in the case. Judgment for defendant, 1. *Lut.* 82.

And upon the case by *sheriff* against prisoner for an *escape* out of execution.

On the like on the same process. Plea, that he escaped with consent of to appear at the return of the writ, &c. *probat per recordum.* Replication.

On the same and parties amend, 1. *Lut.* 71.

Against *sheriff* who took a *capias allegatum* upon a person present in the court of execution, 3. *Br.* 35. *Ass.* 57. A special *capias allegatum* in the court, *Ass.* 123. *Ass.* *capias ad satisfaciendum*, *Ass.* 30. Statute

On the case of the *capias allegatum* before judgment, 1. *Lut.*

Against a *sheriff* who did execute a *capias*, and did not pay the money to the party, 3. *Br.* 35.

Against a *sheriff* who took a *capias* that he took goods of the value of the writ of *execution* delivered to him, 1. *Br.* 35.

Against a *sheriff* who took a *capias* for a debt when he had land, 1. *Br.* 35.

Against a *sheriff* who took a *capias* for a debt when he had not, *Reg. Jud.* 9.

Against a *sheriff* who took a *capias* for a debt where execution was returned *nulla bene*, &c. where execution was returned *nulla bene*, &c.

Against a *sheriff* who took a *capias* for a debt on several juries where he had not, 1. *Br.* 35.

Against a *sheriff* who took a *capias* for a debt on several juries where he had not, 1. *Br.* 35.

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Against a *sheriff* who took a *capias* for a debt on several juries where he had not, 1. *Br.* 35.

Against a *sheriff* who took a *capias* for a debt on several juries where he had not, 1. *Br.* 35.

Plea, by sheriffs to an action for an escape on statute Hen.6. concerning sheriffs taking bail, 2. *Mo. Int.* 151. 188. 190. *Br. R.* 96. and replication, that manucaptors were not *sufficient* in the country where the writ was sued out, and issue, *Ro. Ent.* 309.

Plea, protesting writ was not sued out and delivered, did not take and arrest said R. *prout* and issue, 3. *Inst. Cl.* 354.

Plea, that justices of peace at quarter sessions made a *habeas corpus* to bring the party arrested before them, and that being returned, the said justices discharged him, 3. *Inst. Cl.* 355.

Plea by sheriff, that N. and M. wasted goods as by return, 3. *Inst. Cl.* 376.

Plea, protesting that they proceeded on the writs of *procedendo* with all dispatch, and pleads, that the three writs, or either of them, were not delivered. *Prout*, replication, and issue on the delivery, 3. *Inst. Cl.* 376.

Plea, did not permit to go at large, *Cl. Aff.* 83.

Plea, licence to discharge the prisoner. Replication maintains declaration, and issue, *Ro. Ent.* 301.

Plea to escape, that he took bail for appearance, *Ro. Ent.* 309.

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Plea, did not take the defendant on a bill of Middlesex, *Upp.* 48. *Ash.* 14.

Plea by bailiff of a liberty for an escape, that he did not take or arrest, *Ro. Ent.* 87.

Plea by deputy marshal to declaration, husband and wife, that the wife, by husband's consent, *ordered* him to let the prisoner at large. Replication, issue on the order, *Mo. Ent.* 301.

Plea by officers, not guilty, *Bro. Met.* 24.

Against sheriff, for false return of an outlawry. **Plea**, that before the inquisition on the writ of outlawry made, a prerogative writ issued out of the exchequer, directed to the sheriff to levy the king's debt, by virtue of which they seized all the goods of D. and had the money levied thereon before the barons of the exchequer, and that D. had no other goods. Demurrer, 2. *Vent.* 37.

Plea, not guilty, by the sheriff to an action for an escape and false return.

Plea to declaration for escape on *latitat*. **Plea**, that defendant, as sheriff, took *sufficient security* for the prisoner, according to the form of the statute; and traverses that he permitted prisoner to go at large before taking sufficient security. Replication, that defendant, before taking security, had notice that the writ of *latitat* was sued out for the recovery of eighty pounds for a debt, *Tbo.* 64.

4. Against other OFFICERS acting in some PUBLIC MINISTERIAL Capacity, as

1. Attornies. (*See Deceit, ante.*)
2. Justices of the Peace,
3. Customs, Officers of
4. Excise Officers,
5. Returning Officer (to serve in Parliament.)

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- Against an attorney, for acknowledging satisfaction on a judgment in debt without a warrant, 1. *Bro. Ent.* 26. Same in dower, *Ro. Ent.* 37.
- For appearing for plaintiff to an original without process, *Cl. Aff.* 286.
- For suing out a *ca. sa.* without a warrant, *Br. R.* 47. For suing out an *extendi facias*; declaration and judgment by *non sum informatus*, and the money paid by the plaintiff. Note, verdict for plaintiff, but judgment was arrested, *Robins. Ent.* 15.
- Similar against one who made default, where judgment was for defendant, 2. *Instr. Cl.* 184.
- Similar, where there was an outlawry after judgment, *Rob. Ent.* 98.
- Against an attorney, for tearing and defacing a bill delivered to him, by means whereof plaintiff could not recover his debt, *Cl. Aff.* 269. Against the *clerk of the chief clerks*, clerks of B. R. for appearing for plaintiff on a *latitat* without any warrant, where there was a declaration and judgment, *Br. R.* 12.
- Against an attorney, for taking fees and money for the entry of six issues on the record, when he had only entered four, 1. *Bro. Ent.* 33.
- Against an attorney, who caused plaintiff to be taken in execution at the suit of T. without his consent, and when he knew plaintiff had a release, 1. *Bro. Int.* 78.
- For recovering judgment against plaintiff at the suit of H. and suing out a *feri facias* thereupon, after an agreement entered into between plaintiff and defendant, 1. *Bro. Ent.* 85.
- For counterfeiting *latitat*, on which plaintiff was taken, and in custody, *Thomp. Ent.* 31. By the sheriff against an attorney, who counterfeited the warrant upon the writ of *capias*, *Br. R.* 50.
- Against an attorney, who recovered judgment on *poslea* to be signed, and sued out writ of *feri facias* against plaintiff before the time being given to shew cause why there should not be judgment, *Thomp. Ent.* 43.
- Against an attorney, who took plaintiff in execution on a judgment of *non. prof.* after a release to him made by defendant in the action, *Br. R.* 65.
- Against the *clerk* in the office, who unduly obtained judgment against one H. B. who afterwards died intestate, and thereupon had letters of administration of the goods, &c. of the said H.; and for pleading the said judgment in bar as a real judgment to plaintiff's demand, under pretence of which, &c. *Re. Dec.* 80.
- By an *attorney* against an *attorney*, for arrest and imprisonment upon a writ of privilege, and procuring plaintiff to be arrested at the suit of others, and not prosecuting such suits to effect, *Rob. Ent.* 90.
- Against an attorney, where one H. H. was indebted to plaintiff in eighty pounds, and being seised in fee of lands to the value of three hundred pounds, and plaintiff having sued the said H. for his debt, the defendant (attorney) and H. set up a fraudulent conveyance to defraud plaintiff of his debt, *Re. Dec.* 85, 86.
- Against an attorney who appeared without warrant for plaintiff to the original without process, *Her.* 145. 180. *Ash.* 38. On an *extendi facias*, whereon declaration and judgment in debt, and money paid, *Her.* 143. Where an imparlance *non informatus*, *scire facias*, execution by default, and *capias ad satisfaciendum*, 3. *Br.* 98.
- Against clerk of the chief clerks of B. R. who appeared for plaintiff on a *latitat* without a warrant, 1. *Br.* 195.
- Against an attorney, who being retained by tenant in dower, made default after imparlance, *Ra. Ent.* 2. *Vet. Int.* 51.
- Against an attorney, who defaced a bill delivered to him, so that plaintiff could not recover on it, *Ash.* 16.
- Against an attorney, who on receiving principal, the debt and damages in the next term, acknowledged satisfaction, 3. *Br.* 62.
- Against an attorney, who delivered to obligor the bond delivered to him to sue upon, *Lat.* 122.

Against

Against an attorney in a plea of land, who by collusion with demandant made default on the *dies datus*; *per quod*, plaintiff lost the land, *Reg.* 113. Where he confesses the action in *quære impedit*, *Reg.* 116.

By the city of London against the mayor, for refusing the poll in the election to office of bridge-master, according to the custom of the city, with the number of the roll, 2. *Vent.* 25.

For entry of an action in an inferior court, and procuring judgment to be entered, and plaintiff to be taken in execution without any notice of it, 1. *Lut.* 67.

For arresting plaintiff without cause, being mayor of London, 1. *Lut.* 68.

Against a prothonotary of C. B. for irregular signing a superseas to discharge a person out of prison who was arrested at the suit of plaintiff, 1. *Lut.* 96.

Against an attorney in the sheriff's court in London, for not suing out a plaint against T. imprisoned at plaintiff's suit, who was discharged for want of declaration, *Vid. Ent.* 16. Same against an attorney, by means whereof defendant recovered against plaintiff, *Cl. Aff.* 278.

Against an attorney, for *imparling* to debt on bond without entering of the conditions of the covenants to be performed, by which means plaintiff was not admitted to plead performance of conditions, *Rob. Ent.* 59. *Her.* 197.

Against an attorney, for suing out an *extendi facias* in debt, and never having delivered proclamation to the sheriff, *Vid. Ent.* 63. *Her.* 202.

Against an attorney, for non-payment of a fine in trespass, and not sending the writ of *superseas* to the writ of *extendi facias* to be withheld, 1. *Bro. Ent.* 33. Against an attorney, who undertook to deliver to plaintiff *fieri facias* upon a warrant of attorney acknowledged for judgment by the debtor, and defendant did not do it, *Re. Dec.* 33.

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Plea to an action against an attorney, who appeared without a warrant, that judgment was signed against plaintiff by *non informatus*, for want of instructions, *Cl. Aff.* 289. Demurrer and joinder. Replication to like plea, protesting that he did not retain, for plea, that he did not request defendant to appear. Rejoinder, and issue on the retainer, 3. *Inst. Cl.* 369. Plea, did not retain, *Asb.* 39.

Plea to declaration against attorney, for acknowledging satisfaction without warrant, that plaintiff retained him to acknowledge, &c. Replication, and issue on the retainer, 3. *Inst. Cl.* 372. *Ro. Ent.* 38.

For cancelling a bond against an attorney. Plea, that he did it as an acquittance, to be cancelled. Replication, that he delivered it to be safely kept; and issue, 3. *Inst. Cl.* 375. That he was retained by principal in the bond, *Her.* 181. *Ro. Ent.* 18.

Plea, retainer by a stranger to appear for plaintiff, and did appear, and for want of instructions pleaded *non informatus*, *Ro. Ent.* 18. 99. Replication on the retainer, *Ro. Ent.* 20.

Plea, that plaintiff retained him to appear in one action, and requested him to appear in all. Replication, did not retain, &c.; for plea, did not request defendant to appear for him in all the actions, *Her.* 183. *Ro. Ent.* 20. Like plea. Replication. Rejoinder, and issue, 1. *Bro.* 33.

Plea to declaration for acknowledging, &c. without warrant; protesting that plaintiff made warrants; for plea, that there was an agreement between the parties, 1. *Bro.* 26.

Plea to declaration against attorney, for putting in bail, and confessing judgment without a warrant, that plaintiff, by writing, retained to put in bail and confess judgment. Replication, that plaintiff not being able to read, signed the writing as an acquittance for twenty pounds, and not to retain defendant, *Br. R.* 91.

Plea, that one A. retained defendant to sue out for plaintiff a writ of *superseas*, and receive a declaration, who after imparlance ordered his servant to request plaintiff's answer, who gave none, and defendant, for want of instructions

tions pleaded *non informatus*. Replication, that A. did not retain defendant for plaintiff; and issue, *Re. Ent.* 99.

Plea, that the conveyance was *bona fide*, and not fraudulent, but for valuable consideration. Replication, maintaining the Count, and traverses the bar, Rejoinder, and issue on the traverse, *Re. Dec.* 87.

2. Justices of the Peace.

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474. Declaration against a *justice of the peace* for maliciously convicting plaintiff of having sworn two hundred profane oaths without hearing the plaintiff or his witnesses in his defence, whereby the defendant fined the plaintiff ten pounds, and on refusing to pay the money, committed him to prison to hard labour.

3. Excise Officers—Surveyor, and Gauger.

466. Declaration in B. R. by plaintiff, a *brewer*, against defendant, an *excise officer*, for charging plaintiff a second time with the duty of excise on a quantity of strong beer, after his having paid it to another officer, who had gauged the liquor, and taken the true quantity, whereby the plaintiff was obliged to petition the commissioners to be released from the overcharge, whereby he was put to great expence.

4. Custom House Officers.

462. Declaration in B. R. against the collector of the customs of the port of Carlisle, for refusing to make an entry of goods which plaintiff was going to export, whereby plaintiff was hindered from exporting, and put to expence, &c. 2d Count, loss of bounty, and obliged to sell coast-wise. 3d Count, detaining vessel till average price of goods rose to an amount higher than permitted for exportation.
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5. Returning Officers—Mayor of Borough.

478. Declaration in B. R. against the mayor of a borough, for *not returning* plaintiff when duly elected to serve as a member in parliament for the borough, but returning other candidates, *stating the proceedings of the select committee and the house of commons* in declaring plaintiff to be duly elected, &c. &c.

5. Against

5. Against OTHER PERSONS acting in a PUBLIC CAPACITY, whom the Law recognizes as such.

1. Carriers { 1. By Land (14.)
2. Water (15.)

(See Owners and Masters of Ships, Negligence, *ante.*)

2. Farriers,
3. Innkeepers,
4. Livery stable Keepers, } (16.)
5. Surgeons,
6. Man Midwives,
7. Midwives.

1. Carriers by Land.

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504. Declaration in B. R. at the suit of *the proprietor of a waggon* against a *warehouse keeper*, for delivering parcels to other *carriers*, which had been left with defendant to be delivered to plaintiff to go in his wagon.

2. Carriers by Water. (See Negligence, &c. by Masters and Owners of Ships, *ante.*)

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Mor. Pr. 422

Ibid. 426

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2. Wils. Rep. 430
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Ibid. 149

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428. Against defendant, part owner of a ship with plaintiff's ship, lying at anchor at, &c. and was to be freighted to L. defendant caused the *master to deviate* from his intended voyage, and to carry him to V. and ship in return was lost.

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| For mistake and negligence against a person employed by the plaintiff to <i>navigate his boat</i> with malt from a certain place to another place; and a Count in trover, | 1. Wilf. Rep. 319. b |
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| Declaration against the master of a hoy, for falling foul of and sinking plaintiff's dung boat, <i>Mod. Ent. 217.</i> | Lill. Ent. 38 |
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- Declaration by *administrator* against an *attorney*, in not prosecuting to judgment a prisoner in custody at the suit of intestate, who superfed his action. *Per quod*, &c. - - - 1. T. R. 656
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Plea by *innkeeper*, that defendant gratuitously entertained plaintiff for the night; and traverses keeping a common inn, 2. *Mo. Int.* 147. 3. *Instr. Cl.* 340. Replication and issue on the traverse.

Plea (to declaration for horse lost by negligence), that plaintiff requested defendant to put his horse to pasture, who was so put and led away by robbers; and traverse that he was led away by negligence of plaintiff or his servants. Replication, maintains the declaration; and traverse the request to put horse to pasture, *Ro. Ent.* 23. 3. *Instr. Cl.* 341; and issue on the traverse.

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2 fixed

- fixed the shoe as in the declaration is mentioned ; and issue, 1. *Bro.* 31. 3. *Instr. Cl.* 352.
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- Plea by barber, that he did not shave, 3. *Instr. Cl.* 349.
- Plea, that defendant cultivated the land in an husbandlike manner ; and traverse negligence. Issue on the traverse, 1. *Bro.* 73. 3. *Instr. Cl.* 353.
- Plea, that goods were burned in the inn on the way by the act of God, and not through negligence. Demurrer special, *Wi. Ent.* 29.
- Plea by *waterman*, that the boat, with goods in the chest, by tempest was sunk without defendant's *negligence* ; and traverses that they were lost for want of safe custody, *Vid.* 3. 38. *Br. R.* 101. 2. *Mo. Int.* 95. 3. *Instr. Cl.* 303. *Cl. Aff.* 99.
- Plea, that a stranger put fire in the house adjoining plaintiff's house ; and traverses negligently keeping fire, 3. *Instr. Cl.* 337.
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- Plaintiff, seised of lands, had common, and defendant *surcharged* lands with intention to hinder plaintiff of his common, *Her.* 207.
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- Plea, that the proprietor of the land gave *licence* to defendant to put in his cattle; and traverses prescription, 1. *Br.* 250.
- Plea, that J. seised of houses and lands, had common of pasture for all cattle throughout the year, and demised to defendant, who put in his cattle, &c. Replication, protesting &c. maintains prescription in the declaration; and traverses the prescription alledged by defendant, *Her.* 118.
- Plea (disturbance of common by chasing cattle), that W. seised of the manor whereof, &c. devised to defendant for life, who chased plaintiff's sheep, damage feasant; and traverses the prescription, *Her.* 175.
- Plea (to surcharging common), that J. was seised as well of houses and lands as the pasture in fee. *Que estate and non prof.* *Her.* 208.
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- By a copyholder who had common of pasture in a pasture called J. and B. for all his horses and cows upon the premises levant and couchant for the whole year, when defendant put beasts into the common; *per quod*, &c. *Wi. Ent.* 49. 5. *Co.* 111.

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- For right of common for three cows, &c. and for a way right, 2. *Mod. Ent.* 85.
- Plaintiff, seised of messuages and lands, had common for a certain number of beasts in a certain pasture every year when the fields should be sown and from thence after the corn carried away until the field is re-sown, and when the field lies fallow for the whole year, and defendant with carts subverted the common, 1. *Br. Ent.* 47.
- Similar, where plaintiff had common for all his large beasts called rother beasts, levant, &c. in a waste throughout the year, and defendant erected hedges and ditches upon the common, and hindered plaintiff from pulling them down, *Th. Ent.* 33.

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Plaintiff, seised of messuages, &c. had common for all his beasts in B. Fenn throughout the year, and defendant put his beasts into the common, *Thomp. Ent.* 46.

Plaintiff, seised of messuages, &c. had common for all his commonable cattle, and defendant *surcharged* pasture, in order to hinder plaintiff from enjoyment of his common, *Rob. Ent.* 42. For erecting a mill, whereby the plaintiff was prejudiced in his common, 2. *Mod. Intr.* 88.

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Plea, that plaintiff had not the liberty of faldage in the fields of W. except in his lands, *Ro. Ent.* 50.

Plea that defendant was seised of the lands, and so inclosed, as it was lawful for him to do; and traverses prescription by plaintiff, 3. *Inst. Cl.* 317. Replication; and issue on the prescription.

Plea of justification by grant of free warren made by the dean, knights, and canons of Windsor, confirmed by act of parliament in the time of Edw. 4.; and demurrer, *Wi. Ent.* 77.

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Plea to declaration for *surcharging common*, that he is a commoner, and justifies putting in his sheep, 3. *Inst. Cl.* 334.

Plea to declaration for inclosing common, that plaintiff's father gave H. licence to inclose part of the common, and defendant, as his servant, inclosed the same, and so kept it, *Wi. Ent.* 77.

Plea to similar declaration, a custom for tenant in fee to inclose lands lying in fields, and keep them in severalty. Replication, *de injuria*, and traverses the custom, *Hanf.* 23.

Plea to declaration for disturbance of common, that A. seised of lands demised to S. for years, and defendant as executor of S. ploughed the ground, and traverses the prescription and issue, *Tho.* 65.

Plea to declaration for digging turf, a custom that every inhabitant of an ancient house in G. used to dig turf in the faldage, and to put them on the grass to dry for fuel to be burned in a certain messuage; like custom for cutting furze. Replication, maintaining declaration, and traversing the custom. Rejoinder and issue, *Wi. Ent.* 92.

Plea, not guilty, and special verdict, *Vid.* 56. *Wi. Ent.* 69. 82.

Plea to declaration, for holding a leet, that the manor is known as well by one name as another, and queen seised of the manor had a leet which she granted to A. who enfeoffed defendant's father from whom it descended to defendant, who held the court, &c. and traverses plaintiff's seisin. Replication and issue on the seisin, *Ro. Ent.* 88.

Plea, not guilty and issue, *Wi. Ent.* 50. 83.

Plea, not guilty and verdict; as to putting in the cattle, *non cul*; as to depasturing the grass with defendant's cattle, guilty, *Wi. Ent.* 22.

Plea, that *common* was freehold of E. and J. who gave defendant licence to put in his cattle, and traverse the prescription, and issue, *Br. R.* 45.

Plea, that defendant had *common appurtenant* in one place for all commonable cattle throughout the year as copyholders, according to the custom of the manor, and in plaintiff's land *per cause de vicinage*, *Tbo.* 63. 3. *Instr. Cl.* 320.

Plea, that plaintiff had a court leet by prescription belonging to the hundred; that plaintiff unjustly erected a pillory; and as to hedges, that plaintiff had *common* in lands inclosed with them; and traverses that plaintiff had a leet belonging to the manor, *Ra. Ent.* 426. *Vet. Int.* 207.

Plea (to case for disturbance of a liberty by holding the session there), that one defendant, as bailiff of the abbot, and others, made a riot, *per quod* defendant and other justices held their session within the month; by another, that he made an inquisition of offences done out of the liberty; by the under-sheriff, that he executed the precept of the justices; and by another, that he was not present at the session, *Ra. Ent.* 383.

3. Disturbance of Offices.

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Declaration by the lord of a manor, claiming the *franchise* of proving wills and granting letters of administration within the manor, against defendant who was executor of a person dying within the manor, for proving the will in the peculiar court,

- *Mor. Pr.* 345

Declaration by *parish clerk* of a church, on a custom in the parish for so much to be paid by every occupier of yard-land and half yard-land, as stipend or wages, and that defendant is indebted as such occupier,

- *Ibid.* 347

Plea to declaration concerning the office of registrar granted, prior grant made to defendant and one B. who is dead, whom defendant survived, *Wi. Ent.* 25. Special demurrer, with causes to declaration by herald at arms, for disturbance in his office, *Ro. Ent.* 55.

Against an attorney, concerning the office of registrar archdeacon of the archdeaconry of T. granted to plaintiff for life, which defendant exercised and received the fees thereof belonging to plaintiff, *Winch Ent.* 22. 10. *Co.* 58.

By the *steward* of the manor court, for disturbance in an office granted to him for life, *Vid. Rep.* 5. *Ra. Ent.* 5. Similar, by *deputy steward* of B. *Re. Dec.* 138. *Instr. Cl.* 208. For disturbing the steward in choosing his officers, *Cl. Ass.* 276.

Similar, by the *earl*, in the disturbance of office of divers manors granted to plaintiff for life by the queen, *Br. R.* 483. By the herald at arms, for disturbance of an office granted to him by the king for life, *Rob. Ent.* 54. *Her.* 193. Similar, by the serjeant at arms, attending speaker of the house of commons, *Vid. Ent.* 38.

By an *attorney*, for disturbing plaintiff, being *town clerk*, in the execution of his office, and depriving plaintiff of his fees and the profits thereof belonging by reason of his office, 1. *Bro. Ent.* 59.

By an *under clerk* of the treasury, against a clerk of the treasury and keeper of the writs, for disturbing plaintiff in the receipt of his fees and emoluments of his office, *Vid. Ent.* 18.

By

By the mayor, &c. of London, for disturbing his *deputy* in the measuring of coals,
Br. R. 119. 3. *Br.* 66. *Her.* 102. 141.

On a *pluries mandamus*, for disturbing the plaintiff in the exercise of the office of an
 alderman of W. in the county of B. *Re. Dec.* 144.

For disturbance of the office of steward of several manors, granted to the plaintiff by
 the king for life, 9. *Co.* 42. 1. *Br.* 192. *Her.* 232.

4. Seats in Churches.

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518. Declaration in C. B. for obstructing plaintiff in the use
 of his pew, by breaking off the lock, and affixing
 another, and sitting therein with his family to the ex-
 clusion of plaintiff and family.

Declaration for pulling down plaintiff's pew, erecting a
 reading desk and pulpit, and making a way through the
 pew,

Mor. Pr. 340

Declaration in tort and prohibition, states that plaintiff in right
 of an ancient messuage, and also his predecessors have used
 to repair a *seat in the church* from time immemorial, which
 has lately been taken into a *pew* and solely used by plaintiff
 and family; that defendant has impeached his title to this
 seat by suit in ecclesiastical court, when, refusing to hear
 proof, the plaintiff obtained a writ of prohibition, not-
 withstanding which defendant proceeded in contempt,
 &c.

1. R. Pr. C. B. 492

Plea to a prohibition, denying that he prosecuted against the
 king's writ of prohibition, and concludes to the country.
 2d, For the obtaining a writ of consultation, says, that the
pew mentioned in the declaration was an ancient pew without
 the addition of any *seat taken from the church* within the me-
 mory of man, and was always solely repaired by defend-
 ant and his ancestors; and that he brought his suit in the
 spiritual court against defendant as an intruder, and traverses
 plaintiff ever repairing the pew. Replication.

Ibid. 516

Plea, disturbance in a *pew in a church*, that defendant had a *seat* in the chancel of
 the church; and traverses that all the places belonged to plaintiff, 3. *Inst. Cl.* 316
Br. R. 96.

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510. Declaration in B. R. for pulling down a bridge over
 which plaintiff had a *right of way*; *per quod*, &c.

511. Declaration in B. R. for obstructing plaintiff's right of
 way by erecting a gate. 2d Count, obstructing right

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- of way by erecting hedges and pulling down the bridge.
516. Declaration in B. R. against the *rector* of a parish, for not repairing a *cart way* leading to plaintiff's house, which he is bound by prescription to do in respect of his glebe.
519. Declaration in C. B. against defendant, for erecting a gate across a *way* which led from the plaintiff's house to the king's highway. [Various Counts laying the obstruction differently, and in different places]
- Declaration for *erecting a gate, &c. across a way* leading to the plaintiff's messuage, laying rubbish before the plaintiff's door and raising the ground, also for laying rubbish before the plaintiff's windows, whereby he was obliged to brick them up, - - - - - Mor. Pr. 338
- For *building* part of a house *on a way*; also for erecting a privy near to plaintiff's house, so that the filth ran into it; the tenant for some years insisted on and had an abatement of rent, and at length quitted the same, - - - - - Ibid. 335
- Plaintiff prescribes for a way through a passage to her room; defendant left a wine vault open, plaintiff fell down and hurt herself, - - - - - Mor. Pr. 337
- Declaration in case at the suit of an attorney, for *digging a trench in a street*, wherein plaintiff fell and broke his leg, 2. R. P. C. B. 141
- Declaration for *stopping a way* to plaintiff's close, - - - - - Lill. Ent. 72
- Declaration for putting the hoys, of which defendant had the management, nigh and opposite to plaintiff's quay in the river Thames, and so close together that plaintiff's quay was broke up, and no *passage for vessels, &c.* to go out and come into the said quay to unload, which likewise prevented plaintiff's lighters from sailing in and about the said river, - - - - - Ibid. 104
- Declaration in tort, for disturbing the plaintiff in the use of his way. Plea, that one W. V. was seised in fee, that the said W. V. time out of mind *had a way* from the common way in the declaration mentioned, by and through the said place called B. Lane, and from that to and in the said close called B. Close, and so back again, and there justifies as servant to V. and with the said V.'s carts, &c. Replication, confessing right of way, but that defendant went further than the close of V. called B. Close, to another close called W. L. Rejoinder and issue. - - - - - Mod. Ent. 131
- Declaration in tort, for blocking up a lane, through which plaintiff carried his coals from his colliery, - - - - - Ibid. 133
- Action upon the case, for disturbing plaintiff in the use of his way, - - - - - 1. Ld. Raym. 75
- Plea, justification prescribed for a way through the way in the declaration. Replication, confesse the way of defendant, but defendant went beyond the close to which he prescribed to have a way. Rejoinder, demurrer, and joinder, - - - - - 3. Ld. Raym. 86
Plaintiff,

- plaintiff, by reason of his lordship, had common in the *vill* at certain times every year, and a way to lead and bring back cattle, and defendant made trenches across the way, *Ra. Ent.* 616. *Vet. Int.* 197.
- By a few inhabitants, for stopping up a way to the *vill* by logs fixed to a gate, 3. *Br.* 45.
- By inhabitants of a *vill*, for stopping up a way leading through closes to houses, by erecting a hedge, *Upp. B. P.* 120.
- D. seised of houses and lands, had a foot way, horse way, and for carriages, from houses and lands through defendant's lands unto the park of the said D. who demised to plaintiff for life, and defendant stopped up the way by inclosing the lands, *Co. Ent.* 11.
- Plaintiff, seised of ten acres of land, had a way from the highway unto the lands, and defendant obstructed way by gates and posts, *Asb.* 16.
- By lessee of a close, for obstructing a way by erecting posts and rails, *Her.* 142.
- By copyholders, obstructed in their way to market by hedges and ditches made across the way in the close, *Her.* 73. 102.
- By a parson, obstructed in his way to carry off tithes, *Reg.* 105. 1. *Br.* 189.
- Plea (disturbance of a way), that plaintiff seised of lands inclosed them, as it was lawful for him to do, and traverses prescription, *Co. Ent.* 12.
- Count in an action on the case, for disturbing plaintiff in the use of a way. Plea, that one V. had a way by prescription over the place in which, &c. to another close, &c. Replication, that defendant went over the said close to another close of plaintiff. Rejoinder, and defendant maintains his plea. Demurrer, and judgment for plaintiff, 1. *Lut.* 111.
- Count in an action on the case, for disturbing of a right of way adjudged had after verdict, for that it was to claim a certain piece of land, containing by estimation four acres, 2. *Lut.* 1248.
- Plea, prescribing in a right of way, 2. *Lut.* 1426.
- By the *vicar* of a church, for disturbing him in his way to carry off his tithes, by making a ditch across the way in the close, 2. *Bro. Ent.* 9. Similar, by the *rector*, for inclosing a field, that plaintiff and his servants could not have ingress to carry off tithes, *Ibid.* 17.
- By the inhabitants of a *vill*, for stopping up the highway leading through a parcel of land called M. to R. by erecting hedges and a gate, *Vid. Rep.* 42. Plaintiff, *ratione tenuræ*, had a way, which defendant stopped up by raising a wall, *Ibid.* 56. *Cl. Man.* 173. 33. *Hen.* 6. *Dig.* 187. *Asb.* 15. *Hir.* 207.
- Plaintiff, seised of messuages and lands, had a way from the messuage to a well of water and to one acre of land, parcel of the tenements, in the field for carriages and driving of cattle beyond three acres of defendant, in which defendant made trenches across the way, *Br. R.* 13. 1. *Br.* 197.
- Plaintiff, seised of messuages and of a close of land, had a way for carts and carriages from the messuages beyond defendant's land and the aforesaid close, and the defendant stopped up the way by erecting a house, *Br. R.* 14. 1. *Br.* 200.
- By *lessee for years* where lessor had a foot way from the messuages beyond the defendant's close, as well to the *vill* of W. as to a well or spring in the close, and defendant made a ditch over the greatest part of the way, and ploughed up the way, *Br. R.* 43. 2. *Inst. Cl.* 238. 1. *Br.* 247.
- Plaintiff, being possessed of and inhabiting a messuage in the *vill*, had a foot way for himself and servants from the *vill* of W. in, through, and over closes called C. and D. to the *vill* of B. to pass and repass; and defendant made ditches and trenches across the way, and shut up the way by hedges and fences, 2. *Vent. Rep.* 285. Judgment for plaintiff.
- For filling up a well, &c. *Cl. Man.* 174. For making a ditch in the way, *Cl. Aff.* 214. For disturbing plaintiff in a way which he had by prescription, *Ibid.* 266.

6. Other Incorporeal Rights, Franchises, &c.
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523. Declaration in B. R. by the possessor of an *ancient water corn mill*, in the manor of A. and to which defendants were bound in consequence of a messuage they possessed within the manor for grinding their grist, (which they used and spent within the manor), at another mill; *per quod* plaintiff lost the profit he ought to have had from grinding the grist. Several Counts, varying the nature of defendants obligation to the mill.

Declaration against the hundred, on the statute of *bue and cry*. Plea, not guilty. *Venire* in the next adjacent hundred, in an action on the statute of *bue and cry*,

1. R. Pr. C. B. 500. 510

Declaration at the suit of an *attorney*, for digging a trench in a street, wherein plaintiff fell, and broke his leg,

2. R. Pr. C. B. 141

Declaration by an *executor durante minoritate*, for procuring R. H. who was indebted to plaintiff's testator to confess a fraudulent judgment, and execution to be taken out, and his goods seized and taken away, whereby plaintiff was defeated of recovering the debt. Demurrer thereto, joinder, and judgment for the plaintiff,

Ibid. 142. 145

Declaration in the C. B. at the suit of *administrator*, against the *high bailiff* of the duchy of Lancaster, for levying the goods of plaintiff's tenant without paying him a year's rent in arrear, *contra formam statuti*,

Lill. Ent. 46

Declaration by a *new chosen mayor* of the city of Coventry, against the late mayor and the pretended present mayor, for the ensigns of mayoralty, and for a false return to a *mandamus* sued out by plaintiff commanding him to deliver them,

Ibid. 48

Declaration by the *new chosen mayor* of Banbury, in the county of Oxford, against the late mayor, for the charter book, ensigns of mayoralty, and for a false return to a *pluries writ* of *mandamus* sued out,

Ibid. 51

Declaration by plaintiff seised in fee of a market, and kept public weights, and had toll, &c. for disturbing him in the enjoyment thereof, by collecting and appropriating the same to defendant's own use,

Ibid. 63

Declaration on the stat. 13. Ed. 1. against the hundred of Hemlingford, for a robbery committed by the servant on the master's property. Plea, not guilty, and issue. Sug-

gestion,

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- gession, that the inhabitants of the hundred are defendant's, and interested, and prayer of *venire* to another hundred, - *Ibid.* 295
- Declaration against the *owners of a ferry boat*, for not keeping it in repair. Plea, no such custom, and defendants built a bridge. Replication, not permitted to pass over the bridge. Demurrer, &c. -
- Declaration in B. R. for not grinding corn at plaintiff's mill, 1. *Ld. Raym.* 493
Mod. Ent. 183
- Declaration in case upon an agreement in writing, that the plaintiff should build a yard in the defendant's close, and not lay out less than twenty pounds thereupon, and that the plaintiff should enjoy it for his life; the plaintiff avers that he did build the yard, &c. and enjoyed the same for some years as an easement, and assigns for breach that the defendant wrongfully and injuriously obstructed him in his enjoyment of his said easement; and a Count in *trover*, - 2. *Will. Rep.* 348
- Declaration for erecting a new sheep fair in prejudice of plaintiff's old fair, which he claimed under tenant in fee by prescription, - *Lill. Ent.* 30
- Declaration for stopping up a well or pool of water in which plaintiff used to water his cattle, - *Plead. Ass.* 106
- Declaration in case by plaintiff, who is seised in fee of a market, and kept public weights, and had toll, &c. for disturbing him in the enjoyment thereof, by collecting and appropriating the same to defendants use, - *Lill. Ent.* 63
- By the warden and bailiff of the liberty of P. who by letters patent from the queen consort had execution and return of writ within the liberty, against a person who arrested a man within the liberty, *Tbo. Ent.* 42. Similar, by the lords of the hundred, against the *sheriff's officer*, on a title especially pleaded, *Win. Ent.* 83. Similar, by lord of the seven hundreds, on several breaches, *Vid. Ent.* 55.
- By the mayor and citizens of York, who had execution and return of writs within the city by prescription, against a sheriff's officer, who arrested a man within the liberty and imprisoned him in the prison of the church, *Br. R.* 47. Similar, by the *bishop*, by prescription, *Ibid.* 88.
- By the lords of a manor, who had a court of view of *frankpledge*, against one who held another court of view of *frankpledge* within the same *vill* by another name, *Rob. Ent.* 88.
- By an abbey seised of a ferry, against defendant, who carried over passengers in his boat, *Rob. Ent.* 51. Similar, *Pl. Gen.* 18.
- For erecting a new market, to the disturbance of plaintiff's market, 2. *Sand. Rep.* 172.
- By customary tenant of a mill, against occupier of tenements, who by *custom* ought to grind at the said mill, *Her.* 83.
- Plaintiff, seised of sheep-folds and right for sheep to run in close called N. for six hundred sheep, when the close should not be sown, and defendant inclosed the close with hedges and ditches, *per quod* plaintiff could not keep his sheep fold, *Win. Ent.* 71. 91.
- The bishop, seised of a manor, had right of *faldage*, and for sheep to run in copyhold lands of defendant for sheep not exceeding in number three hundred from feast day to feast day every year, when the closes should not be sown with grain; and demised to plaintiff, and defendant chased the sheep out of the pasture, *per quod* one of them was lost, and

- and the residue damaged, and part of the common he inclosed with hedges and ditches, *Br. R.* 65.
- By the *assignee* of a term, who had right to common of pasture for three hundred sheep and one ram every day for the whole day in every year, and defendant chased the sheep from the pasture with dogs, and hindered plaintiff from enjoying pasture there for a time, *per quod* some of the sheep perished, *Rob. Ent.* 62.
- Plaintiff, seised of messuages and lands, had faldage and run for five hundred sheep on a great briar wood or brush wood, called, &c. throughout the year, and defendant dug the turfs and sod, and laid them upon the grass to dry, *per quod* lost the benefit of the faldage, *Win. Ent.* 91.
- Plaintiff, seised of the messuage and lands, had common for all his beasts levant, &c. throughout the year, and defendant erected a house there, and made holes or burrows for coney, and placed hedges in and about the common to make a warren, *Win. Ent.* 82.
- By the *lessees*, who had right of common in a close for all commonable cattle whatsoever for two years successively, when close should be sown after the corn carried off, and for every third year when fallow for the whole year; defendant inclosed part, &c. *Ibid.* Qu. No reference in *Cornwall's Tables*.
- Plaintiff, seised of messuages and lands, had common in a certain pasture for four hundred and sixty sheep levant, &c. throughout the year, and defendant, having no right, put in cattle, *Br. R.* 44.
- Plaintiff, seised of messuages, &c. had *estovers* in lands for necessary fuel; and defendant, to hinder plaintiff of his common, cut and carryed ten cart loads of furze and briar, *per quod* plaintiff lost the benefit of his common, *Br. R.* 73.
- Plaintiff, possessed of lands, had right of faldage of all his sheep to depasture in all the fields of G, from day to day upon his lands, and defendant did not fold the sheep which he put into the fields upon the lands of plaintiff as he ought, *per quod* plaintiff lost the profits of his faldage, 2. *Vent. Rep.* 136.
- For inclosing land with hedges in which plaintiff had common of pasture, *Cl. Aff.* 266. For erecting a mill whereby the plaintiff was prejudiced in his common, 2. *Med. Int.* 88. For digging, &c. to the prejudice of the plaintiff's common, *Ibid.* 250.
- By a copyholder, against the lord of the manor and others, who cut trees upon the copyhold tenements, by which plaintiff had not sufficient wood for fuel, hedges, and timber for repairs, according to the custom of the manor, *Br. R.* 46.
- Plaintiff, seised of the manor, had common of pasture, whereof defendant inclosed parcel, and put his cattle in the residue, *per quod* he surcharged the pasture, *A/b.* 60.
- Plaintiff, seised of a manor, had feeding pasture and faldage in place called, &c. containing, &c. for sheep, not exceeding in number four hundred, for the whole year, and defendant put in sheep there, *Co. Ent.* 14.
- By copyholders, who had common of pasture in the pasture for all cattle throughout the year, where defendant put in his cattle into the common, *Co. Ent.* 9. 9. *Co.* 112. *Her.* 117. Where plaintiff had common of pasture where defendant had before put in his cattle, 3. *Br.* 60. Where plaintiff had common after corn cut in seven acres of land, which defendant inclosed, 3. *Br.* 96. In four acres, inclosed by defendant, *Her.* 64. Where defendant dug a well in the common into which plaintiff's horse fell and perished, *Her.* 123.
- By lessee of a copyholder, for turfs dug in a common, *Her.* 80. By another, *Ibid.* 116.
- Cave by two on a prescription, against defendants for not grinding the whole of his corn at one of their mills; but bad, for that they said *all their corn*, &c. 2. *Sand. Ref.* 113.
- By the farmer of tithes, against the occupier of lands, where, by the custom of the town, all the occupiers of lands ought to carry off their tithes to the barn called the tithe barn, *Thomp. Ent.* 74.

By farmer of lands, where, by prescription, all the farmers of that farm have *liberty of faldage* for all cattle depasturing within the commonable fields in G. from day to day upon the farm lands, and defendant put on two hundred sheep to be depastured there, but did not fold them as he ought upon the said land, *per quod* plaintiff lost the *profit of his faldage*. Not guilty pleaded, 2. *Vent. Rep.* 136.

V. TORTS (by Nuisances and other Injuries in Nature thereof)

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551. Declaration in C. B. at the suit of *coparceners in fee* (one married) of copyhold premises, and the husband of one, *for cutting down trees, digging in the soil*, with a conversion. Plea, *deducing a title* through several descents to another person as tenant in tail under a *custom of the manor in nature of a borough English*, as servant, to whom defendant justifies, traversing plaintiffs seisin; protesting against the grant to plaintiffs, that they were not seised as alleged in the declaration. Several other pleas, varying the title. The last a plea of justification of the entry under a demise at will to the defendant by plaintiff, lessee from year to year.
554. Declaration, prescription for *eatage* of a close, and for a water course to water cattle,
567. For throwing water out of a *coal mine*, and *not making drains* to carry it off, whereby it ran into plaintiff's coal mine adjoining,
- For erecting a *jetty or pier near a river*, whereby the water was forced against plaintiff's *closes*, and damaging them,
- Declaration against millers, for shutting their gates in a river, whereby the water *overflowed plaintiff's lands* that lie near,
- Declaration by plaintiff possessed of a mill, defendant possessed of another with six bays in it, which he raised six feet higher than usual, whereby the water overflowed and broke plaintiff's mills, &c. and *overflowed plaintiff's lands*, his sheep washing place, &c. and for washing away great part of the plaintiff's closes; the premises in possession of plaintiff's tenant,
- Plaintiff, being seised of the reversion of a close, declares against defendant for undermining it, whereby part fell in,
- Declaration for breaking down the plaintiff's fences, and continuing the same broken down for a long time, whereby the cattle of divers persons *depasturing in an adjoining common* entered and *consumed the grass*. Qu. If not *trespass*,
- Declaration in trespass on the case, for *foundering plaintiff's*

Mor. Pr. 342

Ibid. 349

Ibid. 353

Ibid. 354

Ibid. 357

Ibid. 363

Lill. Ent. 64

ground

- ground* in possession of his tenants, to the prejudice of his *reversionary interest*, of which he was seised in fee, - Plead. Aff. 77
- For erecting a dam on an ancient river which flowed by plaintiff's meadow, whereby the water overflowed it, and carried away plaintiff's manure, &c. - Ibid. 78
- For erecting flood gates and raising banks in a river, &c. whereby, &c. *plaintiff's meadow* overflowed and was drowned, - Ibid. 300
- Declaration in B. R. for *erecting a bay* in a river, and thereby *drowning plaintiff's land* a little above it, - Ibid. 311
- Declaration for stopping a *highway*, whereby the customers could not come to plaintiff's collieries, and his coals were spoiled, - 1. Ld. Raym: 485
- For *breaking down the plaintiff's inclosure*, whereby the cattle of several persons escaped into the plaintiff's closes, - Mod. Ent. 2:6
- Declaration for not repairing the fences between plaintiff's close, in which he had a term, and defendant's, which defendant by reason of his tenure was bound to repair, *per quod* plaintiff's cattle escaped into defendant's ground, and from thence into other grounds of plaintiff, - Pl. Aff. 254
- For not repairing the fences, whereby the plaintiff's cattle escaped through the lands of another, and were impounded, - Lill. Ent. 69

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544. Declaration in C. B. where plaintiff, possessed of a house, which stood between two others, defendant pulled down the two houses, whereby he exposed plaintiff's house to the weather, and rendered it unfit to live in, and he was obliged to go into another house.
546. Declaration in B. R. for tilting a leaden box which had been placed between plaintiff's and defendant's cisterns, for the purpose of carrying the *rain water* from their two house tops into each of them equally, and thereby conveying it wholly into that of defendant.
548. Declaration in B. R. at the suit of the landlord, *tenant in fee* of two houses, for building so near to them as to obstruct the *window lights*.
558. Declaration in B. R. plaintiff and defendant being possessed of two houses contiguous to each other, the defendant wished to rebuild his house, whereby *he pulled down the party wall*, which separated the two houses, by means whereof the plaintiff's house was laid open and his tenant quitted; defendant *did not rebuild* the wall, whereby the plaintiff lost the profit of his house.
566. Declaration in B. R. by a sugar baker against defendant, for *setting casks in a kennel* which ran between plaintiff's and defendant's houses, thereby preventing the

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| | water from running into the common sewer, in consequence of which it came in at the windows of plaintiff's fill-house, and spoiled their sugars. | |
| 567. | For cutting a <i>water pipe</i> which conveyed water to plaintiff's house, whereby plaintiff was deprived of water, and put to great trouble and expence in procuring water for his necessary use. | |
| 571. | Declaration in C. B. by <i>assignee of a lease</i> against the tenant, for pulling down wainscot, &c. affixed to the freehold, with a conversion. | |
| 573. | Declaration in C. B. for obstructing <i>door way, window</i> | |
| 574. | <i>lights</i> , and a <i>water course</i> , by building. Three | |
| 575. | Counts. | |
| 588. | Declaration in B. R. for breaking down a party wall adjoining to plaintiff's house, whereby plaintiff's tenant was disquieted, and refused to live in his house. | |
| | Declaration for erecting a gate, &c. across a way leading to the plaintiff's messuage; laying rubbish before the door of plaintiff, and raising the ground, &c.; also for laying rubbish against plaintiff's windows, whereby he was obliged to brick them up, | Mor. Pr. 330 |
| | For building part of a house on a way; also for erecting a privy near plaintiff's house, so that the filth ran into it; the tenant for some years insisted on and had an abatement of rent, and at length quitted the same, | Ibid. 333 |
| | Plaintiff prescribes for a way through a passage to her room; defendant left a wine vault open, plaintiff fell down and hurt himself, | Ibid. 337 |
| | For digging a cellar so near to the foundation of plaintiff's house, that part of it foundered and fell in, | Ibid. 364 |
| | For following the business of starch-maker in a yard adjoining to plaintiff's messuage, and keeping hogs in the yard, whereby offensive vapours and smells penetrated into plaintiff's messuage and rendered the same unwholesome; for digging a pit and filling the same with starch-makers wash and other filth, which penetrated into plaintiff's well belonging to his messuage, and spoiled the water thereof; also a similar injury to a well belonging to plaintiff's malt house, | Ibid. 449 |
| | Declaration in case against defendants, paviers under the commissioners for paving the streets, for raising the pavement in the front of the plaintiff's houses in Gravel-lane, by which the passage and lights to the houses were obstructed, | 2. Will. Rep. 461 |
| | Declaration for digging so near the plaintiff's windows as to deprive him of the light, | 2. R. P. C. B. 140 |
| | For stopping plaintiff's lights, | Mod. Ent. 143. Lill. Ent. 81 |
| | For continuing the stopping up of lights, | Ibid. 82 |
| | For building a shed on defendant's land adjoining to plaintiff's messuage and land, and thereby obstructed his ancient lights. 2d Count, for keeping swine there and creating a nuisance, | 9. Co. 57
Declaration |

- Declaration in B. R. for raising flood-gates and banks of a rivulet higher than usual, whereby plaintiff's fulling mill could not work for want of water, - - - Plead. Aff. 307
- Declaration for building opposite plaintiff's lights, and plea of former recovery in bar, - - - Salk. 715
- Declaration for a nuisance in building a wall which stopped the light and air from entering into the plaintiff's work-house through the window thereof, whereby the plaintiff lost the profits of his work-house; possession a ledge of a work-house, wherein was a window time out of mind; that defendant is possessed of a parcel of land contiguous to the work-house, and built a wall there which stopped the light and air, &c. Imparance. Plea in bar, that plaintiff hath recovered in another action for the very same nuisance. Judgment in former action. Averment of the identity of the nuisance. Demurrer, joinder. Judgment for defendant. - - - 1. Ld. Raym. 370
- Declaration for *not repairing* a partition wall, whereby a cellar of plaintiff contiguous thereto was damaged by the filth of defendant's privy, - - - 2. Ld. Raym. 1089
- Declaration in case, for annoying the plaintiff by erecting a lime kiln near plaintiff's messuage, - - - Mod. Ent. 127
- Declaration in tort, for stopping up plaintiff's lights, - - - Ibid. 143
- Declaration for negligently keeping his fire, whereby his neighbours house and goods were burnt. This action does not lie. - - - Ibid. 144
- Declaration for a nuisance in obstructing the light, whereby plaintiff lost the benefit of his shop. Plea in bar, another recovery for the same nuisance, - - - Ibid. 146
- Declaration in tort, for annoyance, by defendant being a shoemaker, in conveying his smell by oils and other excrements out of his house through a gutter made by defendant to plaintiff's house, plaintiff being a barber, whereby plaintiff lost his customers, - - - Ibid. 169
- Declaration in tort, for digging in such manner and so near the plaintiff's house that it fell down, so that he was forced to remove to another habitation, and was not able to carry on his trade of a sadler, - - - Ibid. 195
- Against a pavior, acting under authority of commissioners, for raising the pavement at plaintiff's gateway, whereby plaintiff's waggons and carts could not get in, - - - 4. T. R. 794
- For *not repairing* pipes, whereby plaintiff's house and timber which adjoined defendant's brew-house was damaged, - - - 2. Ld. Raym. 1568
- Tort, for *not repairing* road through defendant's closes contiguous to the road and to defendant's messuages, which he was bound to repair as occupier, - - - 3. T. R. 766
- Action for nuisance, for erecting a smith's forge next to plaintiff's house, *per quod*, &c. 1. Lut. 69.
- For erecting a stable and other buildings in disturbance of plaintiff's garden in N. Plea, custom in Norwich to erect such buildings. Replication, traversing custom, and issue, 1. Lut. 91.

3. Water Courses, (Mills). (21)

Watering Places to water Cattle.

Overflowing Lands. (See Nuisances to Lands, *ante*.)

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533. Declaration in B. R. for washing the skins of divers beasts, into which noxious liquors had been infused *in a stream*; at which plaintiff, in right of his messuage, was entitled to have fresh water for the use of his house, and at which he had the right of *watering his cattle*, being on the premises.
535. Declaration in B. R. at the suit of a *mill*, against the occupier of another mill lower down the stream, for obstructing and penning back the water in several different ways, whereby it was turned back upon plaintiff's mill, and prevented his working it. Very special and variety of Counts.
545. Declaration in B. R. against defendant, for erecting a *weir* and mill race, and diverting the course of a river which used to run through the plaintiff's lands *where he watered his cattle*, putting him to great expence in procuring water for his cattle.
562. Declaration in B. R. for digging a hole and throwing stones and rubbish into an *ancient drain*, which ran along defendant's land, and carried the water from off plaintiff's land and coal pits, by which the water was pent up and driven back into the coal pits; and for turning the water of a *rivulet* out of its usual course into a certain canal, and thence into the said drain from which it was forced and driven into the coal pits.
568. Declaration in B. R. for letting down and *continuing sluices and weirs*, thereby *diverting the stream, overflowing* plaintiff's land, spoiling the grafs and hedges, and drowning his sheep.
576. Declaration in B. R. for erecting a *tumbling bay* above the usual height, and thereby impeding the working of plaintiff's mills.
593. Record in B. R. for obstructing and diverting a water course which supplied plaintiff's cotton-mill. Plea, issue, *mittimus* to county palatine of Lancaster.
592. For stopping up a trench in his close which conveyed the waste water of a mill stream near to defendant's close into plaintiff's close, for the amelioration of the soil.
577. Declaration in B. R. against defendant, for diverting an ancient *water course*, which supplied plaintiff's mill.
580. Several Counts, disturbing fishery, &c.
Declaration, prescription for eatage of a close, and for a *water course to water cattle*,
Plaintiff prescribes for the use of a *water course for the benefit of his land*; defendant obstructed it by cutting a trench,
For throwing down a dam and *diverting a water course*. Plea, the dam was on defendant's freehold for the purpose of working his water corn mill, and no other purpose, and

Mor. Pr. 342

Ibid. 365

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- his mill being burnt down, and not intended to be rebuilt,
he drained the land, - - - 2. R. P. C. B. 163
- For diverting an ancient water course, so that plaintiff lost the
benefit of his mill, - - - Lill. Ent. 55
- For diverting a water course from a mill, by pulling down a
wear in a bank. - - - Plead. Aff. 74
- For erecting a dam on an *ancient river* which flowed by plain-
tiff's meadow, whereby the water overflowed it, and car-
ried away plaintiff's mansion, &c. - - - Ibid. 78
- For diverting plaintiff's *water course*, *per quod* he lost the bene-
fit thereof to his lands adjoining. 2d Count, describing the
water course differently. 3d Count, varying the descrip-
tion, - - - Ibid. 228
- For removing *bays set up* in a water course, to the use of which
plaintiff was entitled to water his land, and thereby divert-
ing it from its ancient course, and from plaintiff's land, - Pl. Aff. 252
- Tort in C. B. for diverting a water course, - - - Mod. Ent. 141
- Tort in B. R. for raising flood-gates and banks of a rivulet
higher than usual, by which plaintiff's fulling mill could not
work for want of water, - - - Pl. Aff. 307
- Plaintiff possessed of a close of a meadow for a term of years, and the rivulet used to
run from a certain place called W. through the said close into a pool, and so to
the mill, and defendant so raised the water in the pool that it inundated plaintiff's
close, *Co. Ent.* 18. *A/b.* 46.
- Plaintiff, seised of ten acres of land adjoining a rivulet running to defendant's mill,
and defendant so raised the water in the pool that it flowed over plaintiff's mea-
dow, 1. *Br.* 241.
- For making a bank across a water course, *per quod* the water inundated plaintiff's
pasture adjoining, *Upp. B. P.* 300.
- Plaintiff, seised of a close of meadow on the south part of which a rivulet run, and
both the rivulets and the rains fell at the end of the meadow, and defendant divert-
ed a water course, and thence inundated, *Her.* 203.
- Plaintiff, tenant by the curtesy of a meadow near which a rivulet run, and defendant
dug in the bank of the meadow, by which part of the meadow is inundated, *A/b.* 56.
- Plaintiff, seised of a manor and lands, through which he had a water course, and de-
fendant by erecting a new mill and making streams obstructed the water course,
and caused it to overflow the banks and run through the filth and weeds, *per*
quod the water was corrupted, so that plaintiff's cattle and tenants could not
drink of it, 3. *Br.* 71.
- By lessee of *executor* where lessor, seised of houses adjoining defendant's houses, had a
water course on the back part of defendant's house, and defendant erected tan pits
in the curtilage, *per quod* the air and water were rendered unwholesome, *Co. Ent.* 29.
- Plaintiff, by reason of his tenure, had a separate fishery, and defendant erected a dyc-
house, and caused the filth to run therefrom into the fishery, *Ra. Ent.* 442.
- By lessee of a house in London, who had a leaden pipe for the convenience of carry-
ing off the water from his kitchen through defendant's court yard into the street,
and defendant placed a heap of coals in his yard, near the walls of the house, and
thereby obstructed the course of the water, and the walls became decayed, *A/b.* 43.
- By assignee of a term in a house with a fount of water and leaden conduit, where de-
fendant fixed a leaden pipe to the conduit and diverted the water from the house,
A/b. 44.

4. In Nature of Waste, and for Dilapidations.

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582. Declaration in B. R. by *landlord of a copyhold estate* against his tenant, for very extensive waste. Second Count, as tenant at will.
583. Declaration in B. R. by *landlord who had a life estate* in the premises against *tenant for years*, for pulling down outhouses, walls, gates, &c.
584. Declaration in B. R. *landlord having an estate for life*, according to the custom of the manor, in the premises, against his tenant, for ploughing ancient meadow land.
585. Declaration in B. R. in case in nature of waste by *landlord seised in fee simple* against *tenant for years* not in actual possession, for voluntary and permissive waste in pulling down wainscoat, and leaving premises in that condition at the end of the term; *per quod*, plaintiff was obliged to lay out money in repairs, as well as injured in his estate.
587. Declaration in B. R. by *reversioner* against defendant, for digging mines on his estates.
589. Plaintiff, *seised in fee* of close of land, for digging quarries and pits, and throwing down walls.
591. Plaintiff, *seised in fee* of divers lands, &c. for cutting timber.
596. Declaration in B. R. by *mortgagee for one thousand years* against defendant, for pulling down a cottage which was in the possession of two tenants; *per quod*, plaintiff's *reversionary interest* was much damaged.
600. Against defendant, for suffering premises to be out of repair. Plea, not guilty.
603. Declaration in B. R. by *vicar* against his predecessor, for dilapidations.
571. Declaration in C. B. by *assignee of a lease* against *tenant*, for pulling down wainscot, &c. affixed to the freehold, with a conversion.
- Declaration in case for dilapidations, in not repairing chancel, parsonage-house, outhouses, fences, &c. -
- Declaration by *vicar* against *executors* of late vicar, for dilapidations, -
- Declaration by present *rector* against the *executor* of the late rector of, &c. for dilapidations, *Mod. Ent.* 135. -
- By the present *rector* of a moiety of the parochial church of, &c. for the like, -
- Declaration in C. B. by the present against the *administratrix* of the late *vicar* of a vicarage, for dilapidations, -
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1. R. Pr. C. B. 489

Lill. Ent. 21

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1. R. P. C. B. 489

Action on the case for dilapidations on demurrer. Court was of opinion count was bad, for that the resignation of a prior incumbent alledged in the count was not alledged to be to the ordinary, 1. *Lut.* 115, 116.

DECLA-

DECLARATIONS, PLEAS, &c. UNDER THE PRECEDING HEADS OF NUISANCES
TO LANDS, HOUSES AND LIGHTS, WATER COURSES, &c.

- Plaintiff, seised of a mill, had a water course running in L. to the mill, and defendant broke down the bank, and diverted the water from the mill, *Cl. Aff.* 2:9. *Hansford*, 1. *Ent.* 32. 2. *Inst. Cl.* 234. For diverting the water out of its ancient course, *Cl. Man.* 120. 2. *Inst. Cl.* 231. For obstructing a sink, *Cl. Aff.* 267. For putting lime in water to destroy fish, *Ibid.* 274.
- Plaintiff, seised of two messuages and garden inclosed by a wall contiguous and adjoining to the king's highway, beyond which a stream of water use to run to a yard belonging to a brewer, and defendant, with earth and stones, obstructed the course of the water near the yard, so that the walls of the house and garden became decayed, and neither plaintiff or his tenants could go to the other house in the highway, *Wi. Ent.* 47. Special demurrer thereto.
- Plaintiff, possessed of a close and meadow for a term of years, and the rain used to run from a hill into the highway, and from thence into the meadow, and defendant diverted the water course, and thereby overflowed plaintiff's close, *Ten. Ent.* 39.
- Plaintiff, possessed of an ancient messuage adjoining a water course, and defendant, by throwing therein great quantities of filth, stopped the water course, by which the water run into the *houses*, and overflowed and spoiled plaintiff's goods, 1. *Bro. Ent.* 157. 2. *Inst. Cl.* 235. For raising water in a pool so high that it overflowed plaintiff's close; *per quod*, he lost the profits, and *trees* were spoiled, *9 bump. Ent.* 42.
- Plaintiff, seised of ten acres of meadow adjoining a rivulet running to defendant's mill, and defendant raised the water in a pool so high, that it overflowed plaintiff's meadow, *Bro. Ent.* 40. or *Br. R.* 40. 2. *Inst. Cl.* 237. Similar of two closes, *Rob. Ent.* 44.
- Plaintiff, seised of a meadow called, &c. on the eastern side of which there was a rivulet, and on the south side another called N. and another stream of water run into the rivulet called N. and both rivulets and the rain water fell into the bottom of the meadow, and defendant diverted the *water course*, and thereby overflowed the meadow, *Vid. Ent.* 64.
- By a copyholder against a tanner, for erecting tan pits near a *stream of water* running to plaintiff's *house*; *per quod*, the water became corrupted and unhealthy, *Ro. Ent.* 66. *Her.* 254.
- Plaintiff, seised of a close of pasture, beyond which there was a *stream of water* in which plaintiff had a fishery, as belonging to the close, and defendant erected a house for making allum, and threw the burnt quarries and rubbish in the water; *per quod*, the water became corrupt, the fish died, and plaintiff would not water his cattle there, *Tho. Ent.* 26.
- For not repairing *sea-banks* against the flood and beating of the sea, which defendant ought to repair; *per quod*, the water overflowed plaintiff's lands, *Br. R.* 67. 2. *Inst. Cl.* 113.
- For suffering the covering of a house lately erected by defendant's servant to continue a nuisance to plaintiff's house, by the rain running off defendant's house and falling upon plaintiff's house, 2. *Bro.* 57.
- Plaintiff, seised of a *house and parcel of land* adjoining, and defendant possessed of a garden adjoining, in which he erected a wooden house and a building for pigs, *Rob. Ent.* 18. 9. *Co.* 57. *Co. Ent.* 19.
- By the lessee of a house in the city of B. for darkening two ancient *lights*, and erecting a *wood house* in a yard adjoining, *Rob. Ent.* 7. *Her.* 1. Similar, *Cl. Man.* 57. For stopping up *lights* in London, *Wi. Ent.* 46. *Cl. Man.* 188. 2. *Inst. Cl.* 244. 247. *Rob. Ent.* 8. By an assignee of a lessee in Westminster, 2. *Mod. Int.* 87.

Plaintiff,

Plaintiff, lessee of a house in London, had two ancient *lights* in the kitchen, and defendant possessed of another house adjoining plaintiff's house, and so situated that plaintiff's ancient *light* was not obstructed; but defendant erected a new building so near to plaintiff's kitchen, that a great part of the light in the kitchen was darkened, *Vid. Ent. 28.* For stopping up the *lights* of a house which had seven windows by erecting a new edifice, *Br. R. 34.*

By a copyholder, seised of a house in Stepney in which he had four windows, and defendant possessed of another house and yard, upon which defendant erected two chimnies so near to plaintiff's house, that he not only obstructed the light, but the rain fell upon plaintiff's land, *Tho. Ent. 26.*

Plaintiff, lessee of a house in the city of B. had four windows, and defendant, possessed of another house and piece of land adjoining, erected a house on the piece of land, by which he obstructed plaintiff's *lights*, *Vid. Ent. 6. Co. Ent. 200. 1. Br. 230. Her. 98.*

Plaintiff, lessee of a house in London that he intended to raise higher, and defendant possessed of another adjoining, raised his house so high, that it hung over plaintiff's house and darkened his *lights*, *Ro. Ent. 56. 3. Br. 46. Her. 197.*

Plaintiff, possessed of a shop in which there was a window, and defendant possessed of a shed, which he new raised to hang over plaintiff's shop, and darkened the light, *Wi. Ent. 46.*

Plaintiff, seised of a house before the great fire, which was burnt, and defendant possessed of another house adjoining, that in raising pieces of timber which he placed transversely; *per quod*, plaintiff was hindered from building, *Vidian's Ent. 11.*

Plaintiff possessed of a house, and defendant possessed of another ruinous house adjoining, defendant pulled down the ruinous house; *per quod*, a great part of plaintiff's house fell, and the remainder came to pieces, *Thomp. 38.*

Plaintiff, seised of a house and curtilage, and defendant seised of a house and curtilage adjoining; defendant dug a lime pit in his court, *so near to plaintiff's court*, that parcel of the house and an ash tree belonging to plaintiff growing in the court, and a great part of the earth, fell into the lime home, *2. Sand. Rep. 397. Ash. 47.*

Plaintiff, lessee of a cook room in London, part over a shop, and the passage of defendant's house supported by a brick and wood wall, and posts fixed up, defendant pulled down the wall and post; *per quod*, the cook room fell, *Vid. Ent. 65. Her. 204.*

By lessee of a house and lands, and defendant seised of house and lands adjoining, ought to keep *fences* between the houses, which were out of repair, *1. Bro. Ent. 28. Cl. Man. 185.*

Plaintiff, seised of a *close*, and defendant possessed of a close adjoining, was bound to make hedges between the closes, *for defect of which* the beasts of stranger entered, *Thomp. Ent. 35.* Similar, where plaintiff seised of ten acres of land, and defendant seised of two acres adjoining, *Rob. Ent. 52.*

By the vicar of a church against the *executor* of his predecessor, for dilapidations.

Plaintiff, seised of a close, and defendant seised of a close adjoining, defendant was bound to *keep up hedges* between the closes, in defect of which plaintiff's beasts strayed out of the close into another close, damage feasant; *per quod*, plaintiff was put to great expence, *1. Bro. Ent. 66.* Similar, to keep up fences between two houses, *Ibid. 28.*

Plaintiff, lessee of a close, and defendant seised of a close adjoining, was bound to inclose it with walls, which *were out of repair*; *per quod*, defendant's beasts entered through defect of the wall, and plaintiff lost the profit of the close, *Br. R. 20.* Similar, to inclose with fences between the closes, *Ibid. 466. 2. Inst. Cl. 115. 116.*

- For not repairing fences* adjoining a common; *per quod*, plaintiff's cattle strayed out of the common into defendant's closes and closes of other persons, and were impounded, whereby plaintiff lost the profits of his cattle and common, and expended money for law charges in defence of suits, *Br. R.* 62.
- By the lord of a manor, for erecting a bake-house in a market town, when plaintiff had a *bake house*, and found a baker who baked bread for all the inhabitants within the town, and for other subjects there passing, and that no other ought to bake bread without plaintiff's licence, 1. *Bro. Ent.* 46.
- Against the farmer of a mill, for that through *want of repairing* the banks of the mill pool water overflowed plaintiff's lands, *Cl. Man.* 178.
- For a nuisance by overflowing plaintiff's meadows for want of repairing the bank of a certain piece of land of defendant inclosing water for the mill, *Re. Dec.* 99. *For not repairing* banks of a water course running to plaintiff's mill; *per quod*, plaintiff lost the profits of his mill, *Cl. Aff.* 210. *For not repairing* a gutter between two houses, *Ibid.* 268. *Reg.* 104. *Ass.* 16.
- Plaintiff, lessee of houses in London, in which there was an ancient window, and defendant, who owned the court-yard adjoining, obstructed by putting up boards, *Ass.* 42.
- For building a house so near plaintiff's ground that the rains fell on plaintiff's ground from plaintiff's house, *Ra. Ent.* 442.
- For erecting a horse mill to the annoyance of plaintiff's free mill, *Ra. Ent.* 9.
- J. seised of houses, &c. to which he had common, demised to plaintiff, who put his horse there through *defect of defendant's ditches* between his close and the common, perished in the mud, *Ass.* 41.
- For digging a well in a common, into which plaintiff's horse fell and perished, *Her.* 123.
- Against churchwardens, for *not repairing* a gutter between the church and plaintiff's tenement, *Ra. Ent.* 10. *Vet. Int.* 195.
- For *not repairing* a bank near the river; *per quod*, the water inundated the lands adjoining, 29. *E. 3.* 32.
- For not repairing ditches, 46. *E. 3.* 1. 12. *H. 4.* 7.
- By lessee of houses and lands, and defendant seised of adjoining houses, ought to make fences between the hedges that are out of repair, 1. *Br.* 263.
- Plaintiff, seised of a close for life, and defendant seised of one adjoining, ought to make hedges between the closes, through defect of which the cattle of other persons entered, and plaintiff's cattle went out of their own close, *Her.* 61.
- Plaintiff, seised of six acres of land, and defendant seised of two acres of land adjoining. *Her.* 190.
- By the rector of the church against the *executor* of a prior rector, for repairs of houses of rectory unfinished, *Her.* 136.
- By lessee of a house, court, and garden, against a butcher, occupier of a slaughter-house and court, who raised the court, and made a gutter, into which he threw blood and filth of cattle killed, and made the same to run into the court-yard and garden of the plaintiff, *Her.* 236.
- By baker, lessee of the lower part of a house, against a person lodging in the chambers over, for causing urine and other filth to descend into the flour and bread of plaintiff, *Ass.* 47.
- By a butcher, having a shop near which defendant put his dirt, &c. by which the dogs of plaintiff were impaired by the dust, *Ass.* 49.
- Plaintiff, seised of a garden inclosed with a brick wall, and defendant erected his *privy* adjoining the wall, and put earth to the wall through which it fell, and the filth entered the garden, *Ass.* 43.
- For making a sink so near plaintiff's house, who was a barber, that defendant, who was a shoemaker, threw his stinking water into which run into plaintiff's court, *Rob. Ent.* 42. *Her.* 180. 208.

Against the tenant of a house, who suffered the stinking water to run from the kitchen into plaintiff's close; *per quod, he himself*, plaintiff, his servants, and cattle, became infected and corrupted in divers parts of their bodies, 1. *Bro. Ent.* 44.

Plaintiff, seised of a house and garden, and defendant possessed of a brewhouse adjoining, converted the brewhouse into an alehouse; *per quod*, plaintiff lost the pleasantness of his house and garden, *Vid. Ent.* 13.

Defendant erected a shed for melting of tallow so near plaintiff's house that plaintiff could not inhabit it, *Ibid.* 11.

Defendant kept a furnace for lime; *per quod*, the grass and fruit of plaintiff's garden were spoiled and withered, *Cl. Man.* 150.

For breaking down banks, ditches, and water diverted from the mill, *Ro. Ent.* 191. *Ass.* 45.

Plaintiff, seised of two ancient and ruinous *fulling mills*, to which the great part of the river used to run, erected two *corn mills* in their place, and defendant broke down the banks, and diverted the water, 4. *Co.* 84.

For diverting a great part of the water from mill by raising a pool through the water course and ditch, *Dy.* 248.

Plaintiff, seised of a mill and ten acres of meadow adjoining a stream, and the stream run to the mill, and defendant obstructed the water in its course by erecting flood gates, and made water to overflow the meadow, 3. *Br.* 62. *Her.* 133. By lessee of a mill, for diverting by making a rivulet, 3. *Br.* 45. By lessee of a mill, for water diverted from a mill newly erected, *Her.* 82. For a mill erected by defendant so near plaintiff's mill, that the water flowed back upon the wheel of the mill, so that it would not go round, *Her.* 126.

For digging so near the foundation of plaintiff's house that great part of the ground fell, so that he could not exercise his art and business for eleven months, 3. *Lev.* 172.

By remainder-man in fee, for waste done by tenant for life of copyhold, 3. *Lev.* 128.

For stopping up a well from which plaintiff drew water, &c. *Cl. Man.* 174.

Where defendant took away *motes* and bounds, by which plaintiff's and the lands of another person were separated, 3. *Lev.* 176.

Case for trespasses in plaintiff's closes on divers days and times; *per quod*, plaintiff could not take the profits, *Clif.* 88.

By vicar against *executor* of preceding vicar, for dilapidations, *Ro. Ent.* 87. *Mo. Int.* 103.

PLEAS, &c.

Plea, that the rector and churchwardens of the church in London demised houses to defendant, who agreed to build, &c. and that by the custom of the city he built in the soil, although they stopped ancient lights. Demurrer, *Co. Ent.* 20.

Plea to raising a court, and making a gutter by a butcher *non cul* to the gutter, and repaired ancient gutter in decay, and that by prescription he has a water course or canal from defendant's house over the court and garden of plaintiff into a common sewer. Replication, that he made a gutter to carry off the blood and filth; and traverses the prescription for the water course, &c. *Her.* 237.

Plea, *non cul.* *Co. Ent.* 18.

Plea to declaration for raising banks, that defendant used to put turfs upon each side of the pool to raise the banks for the preservation of the water; and traverses that by reason of raising the bank, plaintiff's closes were inundated, *Ro. Ent.* 45.

Plea, custom of London, that if a man built on an ancient foundation, he can obstruct the ancient lights. Replication, no such custom, and trial by the mouth of the recorder, *Vid.* 29. 3. *Inst. Cl.* 378. *Br. R.* 100.

- Plea, that defendant, possessed of a house and curtilage in the city of B. and for necessary use, erected *cumulum fajinum* in the curtilage; and traverses the prescription of the *lights*; issue on the traverse, *Ro. Ent.* 8.
- Plea to declaration by lord of the manor against a person who erected a common baking-house within the manor, that before the erecting of the baking-house he served as an apprentice to a baker for seven years, and being seised of a messuage in the same vill, erected a baking-house for public use, *1. Bro.* 47.
- Plea, protesting, denies the usage, but justifies as servant of rector; and traverses the want of reparations of the cemetery. Replication, and issue on the traverse, *Ro. Ent.* 45.
- Plea of not guilty to an action for digging so near the plaintiff's soil, *recovery in a former action* of trespass for the same, *tort* and damages, *3. Lev.* 173.

5. Consequences of Public Nuisances.

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566. Declaration in B. R. at suit of sugar-baker, for *setting casks in a kennel* which ran between plaintiffs and defendant's houses, thereby preventing the water from running *into the common sewer*, in consequence of which it came in at the windows of plaintiff's mill house, and spoiled their sugars.

6. Not repairing Fences, &c.

PRECEDENTS in
BOOKS of PRACTICE,
REPORTERS, &c.

Declaration for negligence in the defendant's being possessed of a close and coal-pit, ought to have repaired their fences, plaintiff's calf escaped out of the adjoining close into defendants, and fell in the pit,

Mor. Pr. 436

Declaration for not repairing fences dividing plaintiff's from defendant's premises, and alledges a custom for defendant to repair,

1. R. P. C. B. 131

7. Not carrying away Tithes.

Declaration in case for not fetching away tithes, against a rector,

Mor. Pr. 398

Declaration by the occupier of grass land against the rector of the parish, for not carrying away tithe hay set out after notice, but suffering the same to stay to the prejudice of the land,

Lill. Ent. 19

Declaration in case by the occupier against the rector, for not taking away his tithes set out and divided,

Mod. Ent. 214

8. Torts

8. Torts not Reducible, &c.

PRECEDENTS IN
BOOKS OF PRACTICE,
REPORTERS, &c.

Declaration for that plaintiff retained defendant, a carpenter, to repair a house before a certain day, but did not perform the work; *per quod*, the plaintiff's house was damaged, and to use old materials; but defendant, instead of using those, made use of new, whereby, &c. (Vide the Report.) - 5. T. R. 143
Tort for hindering an inhabitant and vestryman to meet the vestry of the parish in a house where the vestry was met, 2. Ld. Raym. 1388

Action on the case on a return of a mandamus, 2. Lut. 1012.

Ag. inst the vicar, for pronouncing plaintiff excommunicated, and thereupon disturbing plaintiff coming to church, when he had not been excommunicated, *Tbo.* 59. 2. *bro.* 20.

For taking and impounding sheep in a private place, that by close impounding, part of the sheep died, and the residue were damaged, *Ro. Ent.* 87. For impounding in different places, *Wi. Ent.* 89. 2. *Instr. Cl.* 179.

For prosecuting a writ of outlawry after outlawry; outlawry reversed, *Br. R.* 18.

For causing plaintiff to be arrested *per infamia* in London, *Cl. Aff.* 213.

By soap-maker, on statute 21. Jac. against monopolies, and for assault, imprisonment, and detention in prison until he paid money for his redemption, and made a deed to the society of soap-boilers, also for taking his goods and chattels, and hindering him in the use and exercise of his art or mystery aforesaid, *Wi. Ent.* 36.

For cutting the tails and necks of the horses of plaintiff, *Cl. Man.* 180.

For withholding and detaining evidence delivered to him to keep, *Cl. Aff.* 212. Destroying fish, *Ibid.* 274.

Against defendant, for not accepting a common appearance, where the debt was under ten pounds, 2. *Mo. Int.* 106.

Plaintiffs agreed to sow the lands of each other a moiety, and defendant made a trench, and drew the water from defendant's lands to the lands sown, *Her.* 115.

Against *overseers of the poor*, who for four shillings and sixpence assessed on plaintiff unpaid, distrained plaintiff's best cow, and sold her to another by covin for fifty-three shillings and fourpence, where defendant had divers cattle of a less price, and did not render to plaintiff the surplus, *Her.* 233.

For loosening a ship's rope belonging to plaintiff; *per quod*, the ship floated towards a bridge and was damaged, *Her.* 213. *Ro. Ent.* 47.

For enticing plaintiff's apprentice, and procuring him to leave his service, *Her.* 78. 1. *Bro.* 67. *Vid.* 85. 2. *Sand.* 169. 2. *Instr. Cl.* 199. His servant, *Her.* 243. *Vid.* 85. *Cl. Man.* 73. 171. 2. *Instr. Cl.* 101. *See ante.*

For inviting plaintiff's apprentice often to absent himself from plaintiff's service, and to play with defendant at unlawful games, at which he lost money to plaintiff, *Her.* 160. *See ante.*

Plaintiff possessed of four iron manufactories and furnace, and one thousand cords of wood, and defendant carried the fuel out of the wood where it lay; *per quod*, plaintiff could not make up the iron, *Co. Ent.* 36.

For waste done after judgment, and before seized obtained, *Reg.* 77.

Against

- Against the lord of the manor, for cutting down trees in copyhold lands of plaintiff, 1. *Br.* 252.
- By tenant for life against tenant at will, for cutting down trees, 1. *Br.* 255. *Her.* 161. 1. *Bro.* 28. *Ro. Ent.* 77. *Br. R.* 48. For destroying the stable, &c. *Mo. Int.* 21.
- For forging a deed to disturb plaintiff in lands purchased, *Ra. Ent.* 253.
- By executor, for forging a will, *Ra. Ent.* 358.
- Against an innkeeper, who sold plaintiff's horse delivered to him to keep, *Upp.* 231. Of a horse to be rode by him, *Her.* 243.
- By lessor against lessee at will, for cottage burned by negligence, *Abb.* 56.
- By lord of the manor seised of the manor held of ancient demesne against defendant, who levied a fine in the court of our lord the king of his tenements held of the manor, and that tenements became impleadable at common law to disinherit plaintiff, *Br. R.* 25.
- By bailiffs, &c. of a borough and ancient town of G.; and demurrer, *Wi. Ent.* 26.
- By son and heir, for forging a will to disinherit him, 1. *Bro.* 25.
- By cognizor of statute merchant against cognizee, who after execution had of the lands, and satisfaction thereon, took plaintiff, *Reg. Jud.* 37. And where he demised lands in satisfaction of the debt, *Reg. Jud.* 37. Where he paid the debt, and got an acquittance, *Ibid.* 37. Where plaintiff paid the debt, and cognizee delivered the deed under the name of an acquittance, and afterwards took plaintiff on a deed which was forged, *Reg.* 62.
- For forging an indenture to molest plaintiff in lands purchased, *Ra. Ent.* 357. By executor of a will forged, *Ibid.* 358.
- Against defendant, who by the name of R. Carew recovered damages against plaintiff and another, and by the name of R. Carew obtained a *ca. sa.* and caused plaintiff to be taken thereon, 1. *Er.* 254.
- Against a counsellor, who revealed plaintiff's secrets; *per quod*, he was vexed in possession of the lands, *Ra. Ent.* 2. *Vet. Int.* 22.
- Against a counsellor, who being retained, procured an estate to be made to plaintiff's use, and afterwards retained by another procured foremedon to be brought against plaintiff, and impleaded against plaintiff on the trial, and afterwards discontinued the writ, *Ra. Ent.* 2. *Vet. Int.* 51.
- Against a vicar, for neglecting to perform divine service within the *scitum* of the manor, 5. *Ca.* 72. *Ra. Ent.* 2. Against an abbot, *Vet. Int.* 117. *Ra. Ent.* 3. 418.
- By a freeman claiming to be villain, *Ra. Ent.* 287. 680. *Vet. Int.* 66.
- For a pledge detained after tender, *Ra. Ent.* 8. 3. *Br.* 106.
- For detaining a writing concerning lands detained by plaintiff, *Ra. Ent.* 5.
- For tearing a bond delivered to be kept, *Ra. Ent.* 7. *Vet. Int.* 20. *Upp.* 238.
- For taking a seal of a writing delivered to be perused, *Ra. Ent.* 7. *Vet. Int.* 162.
- By husband and wife, daughter of a citizen of London, against executor of the daughter's portion due to the wife by the custom of London, and detained, 1. *Br.* 264.
- By a haberdasher against defendant, for using too great familiarity with his wife, by kissing and caressing her, so that plaintiff thereupon became scandalized and hindered in his shop and trade, *Upp.* 243.
- By churchwardens, who had used to cut trees in the church-yard to repair the fences of the church-yard, and defendant, by the command of the rector, cut the trees and carried away the wood, *Rob. Ent.* 44. *Her.* 210. By an abbess against the lord of the manor, for threatening suitors to her mill, *Br. R.* 17.
- Plaintiff, seised of houses by prescription, repaired the isle of the church, and had seat and burial for his family there, and defendant, the vicar, hindered plaintiff from raising a tomb in the isle until he paid six shillings and eightpence, *Co. Ent.* 6.
- For disturbance of execution of statute staple, by shutting the door of the house against

against the sheriff and jury charged, so that they could not see the goods, *Co. Ent.* 12.

By copyholders against the lord of the manor, who cut trees on the customary tenements: *per quod*, plaintiff hath not sufficient fuel for hedges and wood for repairing according to the custom of the manor, *Her.* 226. 1. *Br.* 252.

The king granted to plaintiff the rectory within the tower of London, and defendant hindered plaintiff from entering the church to celebrate divine service, and take the profits thereof, *Her.* 87.

PLEAS, &c.

Plea, that defendant, by retainer, provided victuals when he sent the protection; and traverses that he was attending on his own business, *Ra. Ent.* 493.

Plea, that it was the duty of the *custos brevium* to indorse the three last proclamations of the fine; and traverses that it was the duty of the chirographer to indorse all the proclamations, *Co. Ent.* 17.

Plea (to carrying away wood prepared for the manufacture of iron), that T. sold him one hundred cords of wood to be cut, &c. Replication, that T. sold the wood before to S. who sold to plaintiff. Rejoinder, maintaining the bar; and traversing that T. sold the wood to S. *Co. Ent.* 36.

Plea to an action brought against defendant, who had spoiled plaintiff's hogheads filled with wine (laying in the street before plaintiff's house). with his carriage and horses, that the hogheads were put in the highway which narrowed the passing, and carefully passing with his carriage he gently moved one of the casks. Replication, *de injuria*, &c. by reason of which one of the casks fell in the cellar, and was broken and spoiled, and wine lost; and issue thereon, *Br. R.* 92.

Plea, that defendant was possessed of a house by demise, and had goods in the same, and to keep possession of the house and goods, that the door against the sheriff and jury was charged upon the *extent* against another. Replication, maintaining declaration, and confessing part of the bar; with averment. Demurrer, *Co. Ent.* 13.

Plea, protesting that plaintiff *was not used to repair the stile* in the church, and to have a seat there, for plea, that every vicar has had six shillings and eightpence for breaking the soil in the church or chancel; and traverses prescription to the burial place, *Co. Ent.* 8.

Plea to tort by churchwarden of trees cut in a cemetery, which by custom were for repairs of the cemetery, that defendant the rector being seised of the cemetery in right of the rectory, cut the trees; and traverses that the fences of the cemetery want repair, *Her.* 710.

Plea to case by overseer of the poor, for a cow unlawfully sold, and surplus not rendered to plaintiff; as to all except surplus *non est*. and as to that tender. Replication, did not tender, *Her.* 235.

Addenda—TROVER. (See ante.)

For goods, *Vid. Ent.* 265. *Cl. Aff.* 200. In an inferior court, 1. *Bro. Ent.* 318.

For goods and chattels, *Wi. Ent.* 31. *Mo. Int.* 13. 2. *Vent. Rep.* 63. *Re. Dec.* 424; *Wilk.* 285.

Against two, where one is waived, *Brown's Meth. Nov.* 34.

By an attorney by privilege, *Wi. Ent.* 108. 3. *Br.* 482. Against an attorney for sheep, 99. Against an attorney, for divers goods, household stuff, and other articles. *Bro. Va. Me.* 52. For a horse, *Vid. Ent.* 8. For a gelding, *Ibid.* 266. *Cl. Aff.* 232. For an ox, *Co. Ent.* 38. 40. *Wi. Ent.* 61. *Treatise on Tro.* 137. For two oxen, *Wi. Ent.* 32.

For

For a cow in an inferior court, *Treat. on Tro.* 155. For a silver cup, *Ibid.* 102. *Thomp. Ent.* 32. For a silver salt seller by an attorney by privilege, *Rob. Ent.* 24. For a silver cup, *Gl. Aff.* 233. For some pieces and rings of gold, *Re. Dec.* 411. For an adamant, *Ibid.* 422. For a reclaimed hawk with bells, *Dy.* 306. *Upp.* 230. *Her.* 104. 243. *Tho. Ent.* 33. For woollen cloth, *Re. Ent.* 69. *Gl. Aff.* 232. For a gold ring, *Upp.* 234. 1. *Bro. Ent.* 355. For Brazil wood brought from part of Spanish dominions, *Rob. Ent.* 451. For a ship and goods, *Br. R.* 69. For an ex, *Vid. Rep.* 264. For a bond against an attorney, 1. *Bro. Ent.* 356. *Treat. on Tro.* 142. Similar for an infant by guardian, *Bro. Meth. Nov.* 19. For a bond which defendant entered into to plaintiff, 1. *Bro. Ent.* 355. For a bag of lead and monies numbered in it, *Ibid.* 356. *Treat. on Tro.* 141. For fifty pounds weight of wool, 1. *Bro. Ent.* 358. For monies numbered, *Re. Dec.* 423. For monies numbered, which defendant wrongfully got from plaintiff's wife at card. *Vid. Ent.* 265. By administrator, for money lost by intestate, 2. *Sand. Rep.* 137. By executor, for cattle lost and converted in testator's lifetime, *Her.* 122. *Vid. Ent.* 264. *Thomp. Ent.* 31. *Rob. Entr.* 452. By executor of executor for goods, *Ibid.* 450. By executor, for goods lost in lifetime of testator, and come to hands of defendant since his death, *Her.* 243. *Rob. Ent.* 447. *Mod. Intr.* 16. Similar by husband and wife executrix, *Ibid.* 10. For money lost by the wife at a game of cards called noddly, *Treat. on Tro.* 143. Similar by baron and feme executors, *Lev. Ent.* 32. By executor for goods, of which testator died possessed, and which came to defendant's hands after his death, *Rob. Ent.* 80. *Mo. Intr.* 15. *Treat. on Tro.* 145. 102. By administrator in B. R. *Ibid.* 152. By administrator, for goods lost by intestate, and found after administration committed, *Her.* 87. 122. *Thomp. Ent.* 32. Similar for a bond lost by intestate in his lifetime, and came to defendant's hands since his death, *Vid. Ent.* 255. Similar for a corslet, pike, sword, belt, &c. *Ibid.* For Flemish money lost by two, one of whom died after the conversion and exhibiting of the bill, *Rob. Ent.* 445. By administrator of goods and cattle of intestate lost after administration committed, which come to defendant's hands by finding, and converted them, *Mod. Intr.* 17. 18. *Treat. on Tro.* 148. Plaintiff, as servant of an earl, was possessed of goods which he lost, and which came to defendant's hands by finding, and he sold them; with an averment, that by means thereof he lost his service, *Mod. Intr.* 14. By the king of Spain, for Brazil wood lost, *Ro. Ent.* 497. By assignee of commissioners of bankrupt, for goods and chattels, 2. *Vent. Rep.* 6. 156. Demurrer thereto, 66. 2. *Mod. Intr.* 81. Trover by a surviving merchant, *Lev. Ent.* 19. For one hundred cart-loads of wood and forty beech trees, *Co. Ent.* 41. For corn in the sheaf set apart for tithes, *Mod.* 483. For a statute merchant, *Upp.* 333. Plaintiff possessed of goods which he lost, and which came to defendant's hands by trover, who sold them, *Re. Ent.* 5. *Dy.* 121. *Her.* 149. 251. By administrator, for goods and cattle lost by intestate, and which came to his hands after his death, *Co. Ent.* 38.

PLEAS, &c.

Plea of not guilty, 1. *Bro.* 358. *Bro. Met.* 20. *Wi. Ent.* 33. Not guilty to part, to residue another action in bar and recovery thereon. Plea, statute of limitations, *Tre. Tro.* 159. Plea, that defendant, bailiff of a manor in which the lord had waifs in the county of Middlesex, took the cattle there waived; and traverses that he is guilty in London. Demurrer special, *Vid.* 8. 3. *Br.* 485.



GLOSSARY TO THE CIVIL DIVISION.

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| 1, 2. <i>Show.</i> | Shower's Reports. |
| 1, 2. <i>Stra.</i> | { Strange's Reports, late edition by Mr.
Nowlan. |
| <i>Thes. Br.</i> | Thesaurus Brevium. |
| <i>Tho.</i> | Thompson's Entries. |
| 1, 2. <i>T. R.</i> | Term Reports. |
| <i>Tidd.</i> | { Practice in Court of King's Bench by
Mr. Tidd. |
| 1, 2. <i>Townsf. Jud.</i> | Townsend's Judgments. |
| <i>Tre. Tro.</i> | Treatise on Trover. |
| <i>Vent.</i> | Ventris's Reports.. |
| <i>Vet. Int.</i> | An Old Book of Entries. |
| <i>Vet. N. B. R.</i> | The Old Natura Brevium.. |
| <i>Vid.</i> | Vidian's Entries. |
| <i>Went. Off. Ex.</i> | Wentworth's Office of an Executor. |
| 1, 2. <i>Wilf.</i> | Wilson's Reports. |
| <i>Wilk.</i> | Wilkinson on Office of Sheriff. |
| <i>Wi. or Win.</i> | Winch's Entries. |
| <i>Wood. Lec.</i> | Woodeson's Lectures. |
| <i>Up. Ben. Pre</i> | { Upper Bench Precedents in the time
of the Usurpation in Car. 1. |
| <i>Yel.</i> | Yelverton's Reports. |

F I N I S.

259 91-2

200 403

209 903

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